

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

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

**Date of Report (Date of earliest event reported): November 10, 2022**

**SCILEX HOLDING COMPANY/DE**

(Exact name of registrant as specified in its charter)

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

**001-39852**  
(Commission  
File Number)

**Not available**  
(IRS Employer  
Identification No.)

**960 San Antonio Road, Palo Alto, California, 94303**  
(Address of principal executive offices, including zip code)

**Registrant's telephone number, including area code: (650) 516-4310**

**Vickers Vantage Corp. I**  
**1 Harbourfront Avenue, #16-06**  
**Keppel Bay Tower, Singapore 098632**  
**Singapore**

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
<b>Common stock, par value \$0.0001 per share</b>	<b>SCLX</b>	<b>The Nasdaq Stock Market LLC</b>
<b>Warrants to purchase one share of common stock, each at an exercise price of \$11.50 per share</b>	<b>SCLXW</b>	<b>The Nasdaq Stock Market LLC</b>

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

Emerging growth company

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

## INTRODUCTORY NOTE

Unless the context otherwise requires, “New Scilex” and the “Company” refer to Scilex Holding Company, a Delaware corporation (f/k/a Vickers Vantage Corp. I), and its consolidated subsidiaries following the Closing (as defined below). Unless the context otherwise requires, references to “Vickers” refer to Vickers Vantage Corp. I, a Delaware corporation, prior to the Closing, and references to “Legacy Scilex” refer to Scilex Holding Company prior to the Closing. All references herein to the “Board” refer to the board of directors of New Scilex.

Terms used in this Current Report on Form 8-K (this “Current Report”) but not defined herein, or for which definitions are not otherwise incorporated by reference herein, shall have the meaning given to such terms in the Proxy Statement/Prospectus (as defined below) in the section titled “*Frequently Used Terms*” beginning on page 1 thereof, and such definitions are incorporated herein by reference.

### ***Domestication and Business Combination Transaction***

As previously announced, Vickers, a Cayman Islands exempted company, previously entered into an agreement and plan of merger, dated as of March 17, 2022 (the “Initial Merger Agreement”, as amended by Amendment No. 1 to Agreement and Plan of Merger, dated September 12, 2022, “Amendment No. 1 to the Initial Merger Agreement” and together with the “Initial Merger Agreement”, the “Merger Agreement”), by and among Vickers, Vantage Merger Sub Inc., a wholly owned subsidiary of Vickers (“Merger Sub”), and Legacy Scilex.

On November 9, 2022, as contemplated by the Merger Agreement and described in the section titled “*Proposal 2—The Domestication Proposal*” of the final prospectus and definitive proxy statement, dated October 28, 2022 (the “Proxy Statement/Prospectus”) and filed with the Securities and Exchange Commission (the “SEC”), Vickers filed a notice of deregistration with the Cayman Islands Registrar of Companies, together with the necessary accompanying documents, and filed a certificate of corporate domestication and a certificate of incorporation with the Secretary of State of Delaware, pursuant to which Vickers was domesticated and continued as a Delaware corporation, under the name of “Vickers Vantage Corp. I” (the “Domestication”).

As a result of, and upon the effective time of the Domestication, among other things, (i) each issued and outstanding ordinary share, par value \$0.0001 per share, of Vickers (the “Vickers Ordinary Shares”) converted automatically, on a one-for-one basis, into one share of New Scilex Common Stock (as defined below); (ii) each issued and outstanding warrant to purchase Vickers Ordinary Shares converted automatically into a warrant to acquire one share of New Scilex Common Stock; and (iii) each issued and outstanding Unit of Vickers converted automatically into a new unit with each unit representing one share of New Scilex Common Stock and one-half of one warrant to purchase New Scilex Common Stock at an exercise price of \$11.50 per share on the terms and conditions set forth in Vickers’s form of warrant agreement (though such Units were automatically separated into their component parts at the effective time of the Merger as more fully described elsewhere in this Current Report).

As previously reported on the Current Report on Form 8-K filed with the SEC on November 9, 2022, Vickers held an extraordinary general meeting of its shareholders (the “Meeting”), at which the Vickers shareholders approved and adopted, among other matters, the Domestication and the Merger Agreement as described in the Proxy Statement/Prospectus.

On November 10, 2022 (the “Closing Date”), as contemplated by the Merger Agreement and described in the section of the Proxy Statement/Prospectus titled “*Proposal 1—The Business Combination Proposal*”, New Scilex consummated the merger transaction contemplated by the Merger Agreement (the “Closing”), whereby Merger Sub merged with and into Legacy Scilex, the separate corporate existence of Merger Sub ceasing and Legacy Scilex being the surviving corporation and a wholly owned subsidiary of New Scilex (the “Merger” and, together with the Domestication, the “Business Combination”). In connection with the consummation of the Business Combination, Vickers changed its name to “Scilex Holding Company” (“New Scilex”).

Pursuant to the terms of the Contribution and Satisfaction of Indebtedness Agreement, dated as of September 12, 2022, by and among Legacy Scilex, Scilex Pharmaceuticals, Inc. and Sorrento Therapeutics, Inc., our controlling stockholder (“Sorrento”), immediately prior to the Closing of the Business Combination, Sorrento contributed \$290,570,964 of outstanding intercompany indebtedness owed by Legacy Scilex and Scilex Pharma to Sorrento in exchange for the issuance by Legacy Scilex to Sorrento of 29,057,097 shares of Series A Preferred Stock, par value \$0.0001 per share, of Legacy Scilex (the “Legacy Scilex Preferred Stock”).

At the effective time of the Merger (the “Effective Time”), (i) each share of common stock, par value \$0.0001 per share, of Legacy Scilex (the “Legacy Scilex Common Stock”) outstanding as of immediately prior to the Effective Time (other than shares held by Scilex or its subsidiaries or shares the holders of which exercise dissenters rights of appraisal) was cancelled in exchange for the right to receive a number of shares of common stock, par value \$0.0001 per share, of New Scilex (the “New Scilex Common Stock”) equal to the Exchange Ratio (as defined below); (ii) each share of Legacy Scilex Preferred Stock outstanding as of immediately prior to the Effective Time was cancelled in exchange for the right to receive (a) one share of New Scilex Series A Preferred Stock and (b) one-tenth of one share of New Scilex Common Stock; and (iii) each option to purchase Legacy Scilex Common Stock that was then outstanding was converted into the right to receive an option relating to New Scilex Common Stock upon substantially the same terms and conditions as were in effect with respect to such option immediately prior to the Effective Time except that (y) each New Scilex Option relates to that whole number of shares of New Scilex Common Stock (rounded down to the nearest whole share) equal to the number of shares of Legacy Scilex Common Stock subject to such option, multiplied by the Exchange Ratio, and (z) the exercise price per share for each such share of New Scilex Common Stock is equal to the exercise price per share of such option in effect immediately prior to the Effective Time, divided by the Exchange Ratio (rounded up to the nearest whole cent).

The “Exchange Ratio” means an amount equal to the quotient of (i) the number of shares constituting the Merger Consideration (as defined below), divided by (ii) the sum of the number of (y) shares of Legacy Scilex Common Stock issued and outstanding as of immediately prior to the Effective Time (other than any such shares held in treasury), plus (z) shares of Legacy Scilex Common Stock issuable upon, or subject to, the settlement of options to purchase Legacy Scilex Common Stock outstanding as of immediately prior to the Effective Time. The “Merger Consideration” was calculated as the quotient of (i) \$1.5 billion less Specified Indebtedness (as defined below) divided by (ii) \$10.00. The term “Specified Indebtedness” means the aggregate amount owed by Legacy Scilex to Sorrento in respect of (i) those certain senior secured notes due 2026 issued under that certain Indenture, dated as of September 7, 2018, by and among Scilex Pharmaceuticals Inc., as the issuer, Sorrento, as the parent guarantor, and U.S. Bank National Association, as trustee and collateral agent, as amended from time to time; and (ii) all obligations of Legacy Scilex for borrowed money, or with respect to deposits or advances of any kind (including amounts by reason of overdrafts and amounts owed by reason of letter of credit reimbursement agreements) including with respect thereto, all interests, fees and costs and prepayment and other penalties and all obligations of Legacy Scilex evidenced by bonds, debentures, notes or similar instruments of Legacy Scilex and any of its subsidiaries other than such Specified Indebtedness owed to Sorrento. The Exchange Ratio, as determined in accordance with the terms of the Merger Agreement, was 0.673498, the aggregate Merger Consideration was \$1,500,000,000 and amount of Specified Indebtedness was zero.

Pursuant to the terms of the Sponsor Support Agreement, dated March 17, 2022 (the “Initial Sponsor Support Agreement”, as amended by Amendment No. 1 to the Sponsor Support Agreement, dated September 12, 2022, “Amendment No. 1 to the Sponsor Support Agreement” and together with the “Initial Sponsor Support Agreement”, the “Sponsor Support Agreement”), by and among Vickers, the Company, Vickers Venture Fund VI (Plan) Pte Ltd (“Sponsor One”), Vickers Venture Fund VI Pte Ltd (“Sponsor Two” and, together with Sponsor One, the “Sponsors”) and certain directors and officers of Vickers, the Sponsors forfeited 2,736,000 warrants that were issued in a private placement in connection with Vickers’s initial public offering. In addition, pursuant to the terms of the Warrant Transfer Agreement, dated as of October 17, 2022, by and among Sorrento, the Sponsors, Vickers and Maxim Group LLC, the Sponsors transferred an aggregate of 3,104,000 warrants to Sorrento as over 90% of the public Vickers Ordinary Shares outstanding as of March 17, 2022 were redeemed in connection with the Business Combination.

The foregoing description of the Business Combination does not purport to be complete and is qualified in its entirety by the full text of the Initial Merger Agreement, Amendment No. 1 to the Initial Merger Agreement, Initial Sponsor Support Agreement, and Amendment No. 1 to the Sponsor Support Agreement, and Warrant Transfer Agreement, which are attached hereto as Exhibit 2.1, Exhibit 2.2, Exhibit 10.3, Exhibit 10.4 and Exhibit 10.12, respectively, and are incorporated herein by reference.

## **Item 1.01. Entry into a Material Definitive Agreement.**

### ***Amended and Restated Registration Rights Agreement***

In connection with the Closing, on November 10, 2022, New Scilex, Sorrento, the Sponsors, and Vickers's former directors, Pei Wei Woo, Suneel Kaji and Steve Myint entered into an amended and restated registration rights agreement (the "Registration Rights Agreement"), whereby, subject to certain exceptions, the parties agreed, among other things not to transfer any shares of New Scilex Common Stock or any security convertible into or exercisable or exchanged for New Scilex Common Stock beneficially owned or owned of record by such holder until the date that is the earlier of (i) 180 days from the date of the Registration Rights Agreement or (ii) the date on which New Scilex completes a liquidation, merger, stock exchange, reorganization or other similar transaction that results in all of New Scilex's stockholders having the right to exchange their shares of New Scilex Common Stock for cash, securities or other property. The Registration Rights Agreement will govern the registration of certain shares of New Scilex Common Stock and other New Scilex securities for resale and includes certain customary demand and "piggy-back" registration rights with respect to shares of New Scilex Common Stock held by the parties thereto.

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

### ***Indemnification Agreements***

On the Closing Date, New Scilex entered into indemnification agreements with each of its directors and executive officers.

Each indemnification agreement provides for indemnification and advancements by New Scilex of certain expenses and costs relating to claims, suits or proceedings arising from each director or executive officer's service to New Scilex, or, at New Scilex's request, service to other entities, as officers or directors to the maximum extent permitted by applicable law.

The foregoing description of the indemnification agreements does not purport to be complete and is qualified in its entirety by the terms and conditions of the indemnification agreements, a form of which is attached hereto as Exhibit 10.2 and is incorporated herein by reference.

## **Item 2.01. Completion of Acquisition or Disposition of Assets.**

The disclosure set forth under "*Introductory Note—Domestication and Business Combination Transaction*" above is incorporated into this Item 2.01 by reference.

## **FORM 10 INFORMATION**

*Item 2.01(f) of Form 8-K states that if the predecessor registrant was a "shell company" (as such term is defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), as Vickers was immediately before the Business Combination, then the registrant must disclose the information that would be required if the registrant were filing a general form for registration of securities on Form 10. Accordingly, the Company, as the successor registrant to Vickers following the consummation of the Business Combination, is providing the information below that would be included in a Form 10 if the Company were to file a Form 10. Please note that the information provided below relates to the Company as the combined company after the consummation of the Business Combination unless otherwise specifically indicated or the context otherwise requires.*

### ***Forward-Looking Statements.***

Certain statements contained in this Current Report and in the documents incorporated herein by reference may constitute "forward-looking statements" for purposes of federal securities laws. Such statements can be identified by the fact that they do not relate strictly to historical or current facts. In addition, any statements that refer to projections, forecasts or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. The words "anticipate," "believe," "contemplate," "continue," "could," "estimate," "expect," "intends," "may," "might," "plan," "possible," "potential," "predict," "project," "should," "will," "would" and similar expressions (including the negative of any of the foregoing) may identify forward-looking statements, but the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements in this Current Report may include, for example, but are not limited to, statements about:

- New Scilex's ability to raise financing in the future;

- New Scilex’s ability to realize the anticipated benefits of the Business Combination;
- the attraction and retention of qualified directors, officers, employees and key personnel of New Scilex;
- the ability of New Scilex to compete effectively in a highly competitive market;
- the competition from larger pharmaceutical companies that have greater resources, technology, relationships and/or expertise;
- the ability to protect and enhance New Scilex’s corporate reputation and brand;
- the impact from future regulatory, judicial, and legislative changes in New Scilex’s industry;
- New Scilex’s ability to obtain and maintain regulatory approval of any of its product candidates;
- New Scilex’s ability to research, discover and develop additional product candidates;
- New Scilex’s ability to grow and manage growth profitably;
- New Scilex’s ability to obtain and maintain intellectual property protection and not infringe on the rights of others;
- New Scilex’s ability to execute its business plans and strategy;
- the ability to maintain the listing of New Scilex’s public securities on The Nasdaq Stock Market LLC (“Nasdaq”); and
- New Scilex’s public securities’ potential liquidity and trading.

These forward-looking statements are based on current expectations and beliefs concerning future developments and their potential effects. There can be no assurance that future developments affecting us will be those that we have anticipated. These forward-looking statements involve a number of risks, uncertainties (some of which are beyond our control) or other assumptions that may cause actual results or performance to be materially different from those expressed or implied by these forward-looking statements. These risks and uncertainties include, but are not limited to, those factors described under the heading “*Risk Factors*” in the Proxy Statement/Prospectus. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Some of these risks and uncertainties may in the future be amplified by the COVID-19 outbreak, and there may be additional risks that we consider immaterial or which are unknown. It is not possible to predict or identify all such risks. Readers are cautioned not to place undue reliance on forward-looking statements because of the risks and uncertainties related to them and to the risk factors. We do not undertake any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable securities laws.

## ***Business***

The business of Vickers prior to the Business Combination is described in the Proxy Statement/Prospectus in the section titled “*Business of Vickers*” and that information is incorporated herein by reference. The business of New Scilex is described in the Proxy Statement/Prospectus in the section titled “*Business of Scilex*” and that information is incorporated herein by reference.

## ***Risk Factors***

The risk factors related to New Scilex’s business and operations are set forth in the Proxy Statement/Prospectus in the section titled “*Risk Factors*” and that information is incorporated herein by reference.

## ***Financial Information***

The information set forth under Item 9.01 of this Current Report is incorporated herein by reference.

## ***Management’s Discussion and Analysis of Financial Condition and Results of Operations***

Management’s discussion and analysis of the financial condition and results of operations prior to the Business Combination is included in (a) the Company’s Management’s Discussion and Analysis of Financial Condition and Results of Operations included as Exhibit 99.4 hereto and incorporated herein by reference and (b) Vickers’s Management’s Discussion and Analysis of Financial Condition and Results of Operations beginning on page 26 of Vickers’s Quarterly Report on Form 10-Q, filed with the SEC on November 4, 2022 and incorporated herein by reference.

## ***Facilities***

The disclosure contained in the Proxy Statement/Prospectus in the section titled “*Business of Scilex—Facilities and Properties*” is incorporated herein by reference.

## ***Security Ownership of Certain Beneficial Owners and Management***

The following table sets forth information known to the Company regarding the beneficial ownership of New Scilex Common Stock and voting power as of the Closing Date by:

- each person who is a named executive officer or director of New Scilex;
- all executive officers and directors of New Scilex as a group; and
- each person who is a beneficial owner of more than 5% of New Scilex common stock.

Beneficial ownership is determined according to the rules of the SEC, which generally provide that a person has beneficial ownership of a security if he, she or it possesses sole or shared voting or investment power over that security, including options and warrants that are currently exercisable or exercisable within 60 days. Unless otherwise indicated, the Company believes that all persons named in the table below have sole voting and investment power with respect to the voting securities beneficially owned by them.

The beneficial ownership of New Scilex Common Stock is based on 141,098,856 shares of such common stock outstanding as of November 10, 2022. Voting power is based on 141,098,856 shares of New Scilex Common Stock and 29,057,097 shares of New Scilex Preferred Stock outstanding as of November 10, 2022. Shares of New Scilex Preferred Stock are held solely by Sorrento.

	Number of Shares of Common Stock Beneficially Owned	% of Total Common Stock	Number of Shares of Preferred Stock Beneficially Owned	% of Total Preferred Stock	% of Total Vote
<b>Directors and Executive Officers of New Scilex<sup>(1)</sup></b>					
Jaisim Shah <sup>(2)</sup>	8,432,156	5.6%	—	*	4.7%
Henry Ji, Ph.D. <sup>(3)</sup>	1,904,726	1.3%	—	*	1.1%
Elizabeth Czerepak <sup>(4)</sup>	328,330	*	—	*	*
Tien-Li Lee, M.D. <sup>(5)</sup>	427,670	*	—	*	*
Dorman Followwill	—	*	—	*	*
Laura J. Hamill	—	*	—	*	*
David Lemus	—	*	—	*	*
Tommy Thompson	—	*	—	*	*
All Directors and Executive Officers of New Scilex as a Group (8 Individuals)	11,092,882	7.3%	—	*	6.1%
<b>5% Beneficial Owners of New Scilex</b>					
Sorrento Therapeutics, Inc. <sup>(6)</sup>	138,830,590 <sup>(7)</sup>	96.3%	29,057,097	100%	96.9%

\* Less than one percent.

(1) Unless otherwise indicated, the business address of each of the following individuals is 960 San Antonio Road, Palo Alto, California, 94303. None of the following individuals own shares of New Scilex Series A Preferred Stock.

(2) Represents shares subject to options exercisable within 60 days of November 10, 2022.

(3) Represents shares subject to options exercisable within 60 days of November 10, 2022.

(4) Represents shares subject to options exercisable within 60 days of November 10, 2022.

(5) Represents shares subject to options exercisable within 60 days of November 10, 2022.

(6) The business address of Sorrento Therapeutics, Inc. is 4955 Directors Place, San Diego, CA 92121.

(7) Includes 3,104,000 shares subject to warrants exercisable within 60 days of November 10, 2022.

### **Directors and Executive Officers**

The Company's directors and executive officers, composition of the committees of the Board and information with respect to the independence of the Board after the consummation of the Business Combination are described in the Proxy Statement/Prospectus in the section titled "Directors and Executive Officers of New Scilex after the Business Combination" and that information is incorporated herein by reference.

### **Executive Compensation**

A description of the compensation of the named executive officers of Vickers before the consummation of the Business Combination, the named executive officers of Scilex before the consummation of the Business Compensation and the named executive officers of New Scilex after the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the sections titled "Directors and Executive Officers of Vickers - Executive Officers and Director Compensation," "Scilex's Executive Compensation," and "Directors and Executive Officers of New Scilex After the Business Combination," respectively, and that information is incorporated herein by reference.

Reference is made to the disclosure set forth below in Item 5.02 of this Current Report under the headings “Scilex Holding Company 2022 Equity Incentive Plan” and “Scilex Holding Company 2022 Employee Stock Purchase Plan,” which is incorporated herein by reference.

### ***Director Compensation***

A description of the compensation of the directors of Vickers before the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled “*Directors and Executive Officers of Vickers - Executive Officers and Director Compensation*,” and that information is incorporated herein by reference.

A description of the compensation of the directors of Scilex before the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled “*Scilex’s Director Compensation*,” and that information is incorporated herein by reference.

A description of the compensation of the directors of New Scilex after the consummation of the Business Combination is set forth in the Proxy Statement/Prospectus in the section titled “*Scilex’s Director Compensation - New Scilex Director Compensation Following the Business Combination*” and that information is incorporated herein by reference.

### ***Certain Relationships and Related Party Transactions***

Certain relationships and related party transactions of Vickers and the Company are described in the Proxy Statement/Prospectus in the section titled “*Certain Relationships and Related Party Transactions*” and that information is incorporated herein by reference.

### ***Legal Proceedings***

Information about legal proceedings is set forth in the section of the Proxy Statement/Prospectus “*Business of Scilex—Legal Proceedings*” and such information is incorporated herein by reference.

### ***Market Price of and Dividends on the Registrant’s Common Equity and Related Stockholder Matters***

Information about the ticker symbol, number of stockholders and dividends for Vickers’s securities is set forth in the Proxy Statement/Prospectus in the section titled “*Trading Market and Dividends*” and such information is incorporated herein by reference.

As of the Closing Date, there were ten holders of record of New Scilex Common Stock, one holder of record of New Scilex Preferred Stock and four holders of record of New Scilex Warrants to purchase New Scilex Common Stock.

New Scilex’s common stock and warrants began trading on November 11, 2022 under the symbols “SCLX” and “SCLXW”, respectively. Vickers’s public units automatically separated into their component securities upon consummation of the Business Combination and, as a result, no longer trade as a separate security and were delisted from Nasdaq.

New Scilex has not paid any cash dividends on shares of its common stock to date. The payment of cash dividends in the future will be dependent upon its revenues and earnings, if any, capital requirements and general financial condition. The payment of any dividends will be within the discretion of the Board.

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the sections titled “*Proposal 7—The Stock Plan Proposal*” and “*Proposal 6—The ESPP Proposal*,” which are incorporated herein by reference. The Scilex Holding Company 2022 Equity Incentive Plan (the “Equity Incentive Plan”) and Scilex Holding Company 2022 Employee Stock Purchase Plan (the “ESPP”) were approved by Vickers shareholders at the Meeting.



### ***Recent Sales of Unregistered Securities***

Reference is made to the disclosure set forth below under Item 3.02 of this Current Report concerning the issuance and sale by the Company of certain unregistered securities, which is incorporated herein by reference.

### ***Description of Registrant's Securities to Be Registered***

The description of New Scilex's securities is contained in the Proxy Statement/Prospectus in the section titled "*Description of New Scilex Securities*" and that information is incorporated herein by reference.

Immediately following the Closing, including rollover equity instruments (i.e. stock options), there were 141,098,856 shares of New Scilex Common Stock issued and outstanding, held of record by ten holders; 29,057,097 shares of New Scilex Preferred Stock issued and outstanding, held of record by one holder; and 8,253,331 New Scilex Warrants outstanding held of record by four holders. Such amounts do not include DTC participants or beneficial owners holding shares through nominee names.

### ***Indemnification of Directors and Officers***

Information about indemnification of the Company's directors and officers is set forth in the Proxy Statement/Prospectus in the section titled "*Directors and Executive Officers of New Scilex after the Business Combination—Limitation of Liability and Indemnification of Directors and Officers*" and that information is incorporated herein by reference. In connection with the Business Combination, New Scilex entered into indemnification agreements with each of its directors and executive officers as of the Closing Date. The description of the indemnification agreements set forth above under Item 1.01 of this Current Report is incorporated herein by reference.

### ***Financial Statements and Exhibits***

The information set forth under Item 9.01 of this Current Report is incorporated herein by reference.

### ***Changes in and Disagreements with Accountants on Accounting and Financial Disclosure***

The information set forth under Item 4.01 of this Current Report is incorporated herein by reference.

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

As previously disclosed in Vickers's Current Report on Form 8-K, filed with the SEC on October 18, 2022, Vickers entered into a Debt Contribution Agreement, dated October 17, 2022 (the "Vickers Debt Agreement"), with the Sponsors. The Vickers Debt Agreement relates to certain amounts owed by Vickers to the Sponsors for payment of certain outstanding loans (the "Vickers Obligations") as set forth therein.

Pursuant to the Vickers Debt Agreement, the Sponsors contributed an aggregate of \$5,330,555.80 to the Company ("Company Obligations") in exchange for the issuance to the Sponsors of an aggregate of 533,057 shares (the "Contribution Shares") of common stock, par value \$0.0001 per share, of Vickers (which number of shares was determined by dividing the aggregate amount of the Company Obligations by \$10.00) immediately prior to the consummation of the Business Combination but after the Domestication (as defined in the Merger Agreement).

The Contribution Shares were issued, in a transaction exempt from registration under the Securities Act of 1933, as amended, in reliance on Section 4(a)(2) thereof and Rule 506 of Regulation D thereunder. Each of the Sponsors has represented that such equityholder is an "accredited investor," as defined in Regulation D, and has acquired such Contribution Shares for investment only and not with a view towards, or for resale in connection with, the public sale or distribution thereof.

Except for the registration rights contemplated by the Registration Rights Agreement entered into in connection with the closing of the Business Combination pursuant to the Merger Agreement, the Contribution Shares have not been registered under the Securities Act and such Contribution Shares may not be offered or sold in the United States absent registration or an exemption from registration under the Securities Act and any applicable state securities laws. Neither this Current Report on Form 8-K nor the exhibits attached hereto is an offer to sell or the solicitation of an offer to buy Contribution Shares or any other securities of the Company.

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

In connection with the Domestication and immediately prior to the consummation of the Business Combination, Vickers filed a certificate of incorporation with the Secretary of State of the State of Delaware. The material terms of the certificate of incorporation and the general effect upon the rights of holders of Vickers's capital stock are discussed in the Proxy Statement/Prospectus in the sections titled "*Proposal 2—The Domestication Proposal*" and "*Proposals 5A-5G—The Advisory Governance Proposals*", which are incorporated by reference herein.

As disclosed below in Item 8.01, in accordance with Rule 12g-3(a) under the Securities Exchange Act, New Scilex is the successor issuer to Vickers and has succeeded to the attributes of Vickers as the registrant. In addition, the shares of New Scilex Common Stock, as the successor to Vickers, are deemed to be registered under Section 12(b) of the Exchange Act.

#### ***Restated Certificate of Incorporation of New Scilex and Bylaws of New Scilex***

Upon the effectiveness of the Domestication, Vickers's memorandum and articles of association in effect immediately prior to the Domestication were replaced with a certificate of incorporation and bylaws of Vickers, which continued in effect through the Closing. In connection with the Closing, Vickers changed its corporate name of "Vickers Vantage Corp. I" to "Scilex Holding Company" and restated its certificate of incorporation (the "Restated Charter") to remove provisions relating to the incorporator and initial board of directors following the Domestication and prior to the Effective Time. The bylaws of Vickers became the bylaws of New Scilex (the "Bylaws"). The Restated Charter authorizes the issuance by New Scilex of up to 45,000,000 shares of preferred stock, par value \$0.0001 per share, and on November 9, 2022, New Scilex filed a Certificate of Designations designating 29,057,097 shares of such preferred stock of New Scilex as "Series A Preferred Stock" (the "Certificate of Designations"). The Certificate of Designations sets forth the powers, rights and preferences and qualifications, limitations and restrictions of the Series A Preferred Stock. Copies of the Restated Charter, the Certificate of Designations, and the Bylaws are attached hereto as Exhibit 3.1, Exhibit 3.2 and Exhibit 3.3 hereto, respectively, and are incorporated herein by reference.

The material terms of each and the Restated Charter, the Certificate of Designations, and the Bylaws and the general effect upon the rights of holders of New Scilex's capital stock are included in the Proxy Statement/Prospectus under the sections titled "*Proposal No. 2—The Domestication Proposal*," "*Proposal No. 3—The Charter Approval Proposal*," "*Proposal No. 4—The Bylaws Proposal*" and "*Description of New Scilex Securities*," which are incorporated herein by reference.

### **Item 4.01. Changes in Registrant's Certifying Accountant.**

#### ***Dismissal of independent registered public accounting firm.***

Effective upon the Closing, on November 10, 2022, the Board dismissed WithumSmith+Brown, PC ("Withum"), which served as Vickers's independent registered public accounting firm prior to the Business Combination.

The report of Withum on the financial statements of Vickers as of December 31, 2020 and 2021 did not contain an adverse opinion or a disclaimer of opinion, and was not qualified or modified as to uncertainty, audit scope or accounting principles except for an explanatory paragraph in such report regarding substantial doubt about Vickers's ability to continue as a going concern and emphasized the restatement of Vickers's financial statement as of January 11, 2021 due to its change in accounting for warrants and Vickers Ordinary Shares subject to possible redemption. During the fiscal years ended December 31, 2020 and 2021 and the subsequent interim period through November 10, 2022, there were no disagreements (as defined in Item 304(a)(1)(iv) of Regulation S-K) with Withum on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures, which disagreements, if not resolved to the satisfaction of Withum, would have caused Withum to make reference to the subject matter of the disagreements in its reports covering such periods. In addition, no "reportable events," as defined in Item 304(a)(1)(v) of Regulation S-K, occurred within the period of Withum's engagement and the subsequent interim period preceding Withum's dismissal, other than a previously disclosed material weakness in Vickers's internal control over financial reporting identified by Vickers.

The Company provided Withum with a copy of the disclosures made pursuant to this Item 4.01 prior to the filing of this Current Report and requested that Withum furnish a letter addressed to the SEC dated November 17, 2022, which is filed as Exhibit 16.1 to this Current Report, stating whether it agrees with such disclosures, and, if not, stating the respects in which it does not agree.

### ***Appointment of Ernst & Young LLP***

Effective upon the Closing, the Board approved the engagement of Ernst & Young LLP (“EY”) as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2022. EY’s appointment as the Company’s independent registered public accounting firm was subject to the completion of customary client acceptance procedures, which were completed November 16, 2022. EY audited the consolidated balance sheets of Scilex as of December 31, 2020 and December 31, 2021 and the related consolidated statements of operations, stockholders’ deficit and cash flows.

During the years ended December 31, 2020 and 2021 and the subsequent interim period through November 10, 2022, neither the Company nor anyone on its behalf consulted with EY regarding (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company’s financial statements, and no written report or oral advice was provided to the Company that EY concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue, or (ii) any matter that was the subject of a disagreement within the meaning of Item 304(a)(1)(iv) of Regulation S-K or any reportable event within the meaning of Item 304(a)(1)(v) of Regulation S-K.

#### **Item 5.01. Changes in Control of Registrant.**

Reference is made to the disclosure in the Proxy Statement/Prospectus in the section titled “*Proposal No. 1—The Business Combination Proposal*,” which is incorporated herein by reference. Further reference is made to the information contained in Item 2.01 to this Current Report, which is incorporated herein by reference.

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

The information contained in the sections titled “*Form 10 Information—Directors and Executive Officers*,” “*Form 10 Information—Executive Compensation*,” “*Form 10 Information—Director Compensation*,” “*Form 10 Information—Certain Relationships and Related Transactions*” and “*Form 10 Information—Indemnification of Directors and Officers*” in Item 2.01 to this Current Report is incorporated herein by reference.

Effective as of the Closing, the following people were appointed as directors of the Company:

- Class I directors: Dorman Followwill, David Lemus, and Tommy Thompson;
- Class II directors: Tien-Li Lee, M.D. and Laura J. Hamill; and
- Class III directors: Henry Ji, Ph.D. and Jaisim Shah.

Effective as of the Closing, the executive officers of the Company are:

- Jaisim Shah, President and Chief Executive Officer; and
- Elizabeth Czerepak, Executive Vice President, Chief Business Officer, Chief Financial Officer and Secretary.

Reference is made to the disclosure described in the Proxy Statement/Prospectus in the section titled “*Directors and Executive Officers of New Scilex after the Business Combination*” for biographical information about each of the directors and officers following the Business Combination, which is incorporated herein by reference.

### **Scilex Holding Company 2022 Equity Incentive Plan**

On November 9, 2022, the Equity Incentive Plan became effective. The Equity Incentive Plan is described in greater detail in the section of the Proxy Statement/Prospectus titled “*Proposal 7—The Stock Plan Proposal*,” which is incorporated herein by reference.

The foregoing description of the Equity Incentive Plan, including the description in the Proxy Statement/Prospectus referenced above, does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Equity Incentive Plan, which is included herein as Exhibit 10.5 and is incorporated herein by reference.

### **Scilex Holding Company 2022 Employee Stock Purchase Plan**

On November 9, 2022, the ESPP became effective. The ESPP is described in greater detail in the section of the Proxy Statement/Prospectus titled “*Proposal 6—The ESPP Proposal*,” which is incorporated herein by reference.

The foregoing description of the ESPP, including the description in the Proxy Statement/Prospectus referenced above, does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the ESPP, which is included herein as Exhibit 10.8 and is incorporated herein by reference.

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

The disclosure set forth in Item 3.03 of this Current Report is incorporated in this Item 5.03 by reference.

### **Item 5.05. Amendments to the Registrant’s Code of Ethics, or Waiver of a Provision of the Code of Ethics.**

In connection with the Closing, on November 10, 2022, the Board approved and adopted a new Code of Business Conduct and Ethics applicable to all employees, officers and directors of the Company. A copy of the code is available in the Investors section of the Company’s website at [www.scilexholding.com](http://www.scilexholding.com).

### **Item 5.06. Change in Shell Company Status.**

As a result of the Business Combination, the Company ceased to be a shell company upon the closing of the Business Combination. The material terms of the Business Combination are described in the sections titled “*The Business Combination Proposal*” and “*The Merger Agreement*” of the Proxy Statement/Prospectus, and are incorporated herein by reference.

### **Item 7.01. Regulation FD Disclosure.**

On November 10, 2022, the Company issued two press releases announcing (i) the consummation of the Business Combination, and (ii) the listing of its common stock on Nasdaq. The press releases are filed as Exhibit 99.1 and Exhibit 99.2, respectively, to this Current Report and are incorporated herein by reference. The foregoing (including Exhibit 99.1 and Exhibit 99.2) are being furnished pursuant to Item 7.01 and will not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor will it be deemed to be incorporated by reference in any filing under the Securities Act or the Exchange Act.

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

By operation of Rule 12g-3(a) under the Exchange Act, the Company is the successor issuer to Vickers and has succeeded to the attributes of Vickers as the registrant, including Vickers’s SEC file number (001-39852) and CIK Code (0001820190). The Company’s common stock and public warrants are deemed to be registered under Section 12(b) of the Exchange Act, and the Company will hereafter file reports and other information with the SEC using Vickers’s SEC file number (001-39852).

The Company’s common stock and public warrants are listed for trading on Nasdaq under the symbols “SCLX” and “SCLXW,” respectively, and the CUSIP numbers relating to the Company’s common stock and public warrants are 80880W 106 and 80880W 114, respectively.

Holders of Vickers’s shares who have filed reports under the Exchange Act with respect to those shares should indicate in their next filing, or any amendment to a prior filing, filed on or after the Closing Date that the Company is the successor to Vickers.

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

(a) Financial statements of businesses acquired.

The unaudited condensed consolidated financial statements of Vickers as of and for the three and nine months ended September 30, 2022 and 2021, and the related notes thereto beginning on page 1 of Vickers's Quarterly Report on Form 10-Q, filed with the SEC on November 4, 2022 (the "Form 10-Q"), are incorporated herein by reference. These unaudited condensed consolidated financial statements should be read in conjunction with the historical audited financial statements of Vickers from February 21, 2020 (inception) through December 31, 2020 and the year ended December 31, 2021 and the related notes included in the Proxy Statement/Prospectus beginning on page F-2 thereof, which are incorporated herein by reference.

The unaudited consolidated financial statements of Legacy Scilex as of and for the three and nine months ended September 30, 2022 and 2021 are set forth in Exhibit 99.3 hereto and are incorporated by reference herein. These unaudited consolidated financial statements should be read in conjunction with the historical audited financial statements of Legacy Scilex for the years ended December 31, 2021 and 2020 and the related notes included in the Proxy Statement/Prospectus beginning on page F-48 thereof, which are incorporated herein by reference.

(b) Pro forma financial information.

The unaudited pro forma condensed combined financial information as of September 30, 2022 and for the nine months ended September 30, 2022 and the period ended December 31, 2021 is attached hereto as Exhibit 99.5 and is incorporated herein by reference.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
2.1#	<a href="#"><u>Agreement and Plan of Merger, dated as of March 17, 2022, by and among Vickers Vantage Corp. I, Vickers Merger Sub Inc. and Scilex Holding Company (incorporated by reference to Annex A-1 of Amendment No. 7 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 26, 2022).</u></a>
2.2#	<a href="#"><u>Amendment No. 1 to Agreement and Plan of Merger, dated as of September 12, 2022, by and among Vickers Vantage Corp. I, Vickers Merger Sub Inc. and Scilex Holding Company (incorporated by reference to Annex A-2 of Amendment No. 7 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 26, 2022).</u></a>
3.1+	<a href="#"><u>Restated Certificate of Incorporation of Scilex Holding Company.</u></a>
3.2+	<a href="#"><u>Certificate of Designations of Scilex Holding Company.</u></a>
3.3+	<a href="#"><u>Bylaws of Scilex Holding Company.</u></a>
4.1	<a href="#"><u>Warrant Agreement, dated as of January 6, 2021, by and between Vickers Vantage Corp. I and Continental Stock Transfer &amp; Trust Company (incorporated by reference to Exhibit 4.1 of Vickers's Current Report on Form 8-K (File No. 001-39852), filed with the SEC on January 11, 2021).</u></a>
10.1+	<a href="#"><u>Amended and Restated Registration Rights Agreement, dated as of November 10, 2022, by and among Scilex Holding Company, Vickers Venture Fund VI Pte Ltd, Vickers Venture Fund VI (Plan) Pte Ltd, Sorrento Therapeutics, Inc. and certain security holders set forth on the signature pages thereto.</u></a>
10.2*+	<a href="#"><u>Form of Indemnification Agreement of Scilex Holding Company.</u></a>

<u>Exhibit Number</u>	<u>Description</u>
10.3	<a href="#"><u>Sponsor Support Agreement, dated as of March 17, 2022, by and among Vickers Vantage Corp. I and certain stockholders (incorporated by reference to Annex F-1 of Amendment No. 7 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 26, 2022).</u></a>
10.4	<a href="#"><u>Amendment No. 1 to Sponsor Support Agreement, dated as of September 12, 2022, by and among Vickers Vantage Corp. I and certain stockholders (incorporated by reference to Annex F-2 of Amendment No. 7 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 26, 2022).</u></a>
10.5*+	<a href="#"><u>Scilex Holding Company 2022 Equity Incentive Plan.</u></a>
10.6*+	<a href="#"><u>Form of Stock Option Grant Notice and Stock Option Agreement under the Scilex Holding Company 2022 Equity Incentive Plan.</u></a>
10.7*+	<a href="#"><u>Form of Restricted Stock Unit Award Grant Notice and Restricted Stock Unit Award Agreement under the Scilex Holding Company 2022 Equity Incentive Plan.</u></a>
10.8*+	<a href="#"><u>Scilex Holding Company 2022 Employee Stock Purchase Plan.</u></a>
10.9*	<a href="#"><u>Offer Letter, dated as of April 19, 2019, between Scilex Pharmaceuticals Inc. and Jaisim Shah (incorporated by reference to Exhibit 10.17 of Amendment No. 1 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on June 27, 2022).</u></a>
10.10*	<a href="#"><u>Offer Letter, dated as of April 27, 2022, by and between Scilex Holding Company and Elizabeth Czerepak (incorporated by reference to Exhibit 10.21 of Amendment No. 1 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on June 27, 2022).</u></a>
10.11#	<a href="#"><u>Contribution and Satisfaction of Indebtedness Agreement, dated as of September 12, 2022, by and among Sorrento Therapeutics, Inc., Scilex Holding Company and Scilex Pharmaceuticals, Inc. (incorporated by reference to Exhibit 10.60 of Amendment No. 4 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on September 13, 2022).</u></a>
10.12#	<a href="#"><u>Warrant Transfer Agreement, dated October 17, 2022, by and among Sorrento Therapeutics, Inc., Vickers Venture Fund VI Pte Ltd, Vickers Venture Fund VI (Plan) Pte Ltd, and for the limited purposes set forth therein, Vickers Vantage Corp. I and Maxim Group LLC (incorporated by reference to Exhibit 10.62 of Amendment No. 5 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 18, 2022).</u></a>
10.13#	<a href="#"><u>Debt Contribution Agreement, dated October 17, 2022, by and among Vickers Vantage Corp. I, Vickers Venture Fund VI Pte Ltd and Vickers Venture Fund VI (Plan) Pte Ltd. (incorporated by reference to Exhibit 10.63 of Amendment No. 5 of Vickers's Form S-4 (File No. 333-264941), filed with the SEC on October 18, 2022).</u></a>
16.1+	<a href="#"><u>Letter from WithumSmith+Brown, PC. to the Securities and Exchange Commission.</u></a>
21.1+	<a href="#"><u>List of Subsidiaries.</u></a>
99.1+	<a href="#"><u>Press Release, dated November 10, 2022.</u></a>

<b>Exhibit Number</b>	<b>Description</b>
99.2+	<a href="#">Press Release, dated November 10, 2022.</a>
99.3+	<a href="#">Unaudited financial statements of Scilex Holding Company as of and for the three and nine months ended September 30, 2022.</a>
99.4+	<a href="#">Scilex Holding Company's Management's Discussion and Analysis of Financial Condition and Results of Operation.</a>
99.5+	<a href="#">Unaudited pro forma condensed combined financial information and the accompanying notes as of and for the nine months ended September 30, 2022 and for the year December 31, 2021.</a>
104+	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

+ Filed herewith.  
\* Indicates a management contract or compensatory plan.  
# Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601. The Registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

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**SIGNATURES**

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

**SCILEX HOLDING COMPANY**

By: /s/ Jaisim Shah  
Name: Jaisim Shah  
Title: Chief Executive Officer & President

Date: November 17, 2022



State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 08:01 AM 11/10/2022  
FILED 08:01 AM 11/10/2022  
SR 20223985377 - File Number 7129127

**RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SCILEX HOLDING COMPANY  
a Delaware corporation**

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Scilex Holding Company, a corporation organized and existing under the laws of the State of Delaware (the “*Corporation*”), by its Chief Executive Officer, does hereby certify that:

**ONE:** The original name of this corporation is Vickers Vantage Corp. I and the original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 9, 2022 (the “*Certificate of Incorporation*”).

**TWO:** This Restated Certificate of Incorporation restates and integrates and does not further amend the provisions of the Certificate of Incorporation.

**THREE:** The Certificate of Incorporation is hereby restated to read as follows:

ARTICLE I.  
NAME

The name of the Corporation is Scilex Holding Company.

ARTICLE II.  
REGISTERED OFFICE AND AGENT

The address of the Corporation’s registered office in the State of Delaware is located at 251 Little Falls Drive, in the City of Wilmington, County of New Castle, Delaware 19808. The registered agent is Corporation Service Company.

ARTICLE III.  
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (as amended from time to time, the “*DGCL*”).

ARTICLE IV.  
CAPITAL STOCK

A. The total number of shares of all classes of stock that the Corporation shall have authority to issue is 785,000,000 shares, consisting of (i) 740,000,000 shares of common stock, par value \$0.0001 per share (the “*Common Stock*”), and (ii) 45,000,000 shares of preferred stock, par value \$0.0001 per share (the “*Preferred Stock*”).

B. The designations, preferences, privileges, rights and voting powers and any limitations, restrictions or qualifications thereof of the shares of each class are as follows:

(i) Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation (this “*Certificate*”) (including any Preferred Stock Designation (as hereinafter defined)) that relates solely to the terms of one or more outstanding classes or series of Preferred Stock if the holders of such affected classes or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Certificate (including any Preferred Stock Designation) or pursuant to the DGCL.

(ii) The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors and by filing a certificate pursuant to applicable law of the State of Delaware (hereinafter referred to as a “*Preferred Stock Designation*”) pursuant to the DGCL. The Board of Directors of the Corporation (the “*Board of Directors*”) (or any committee to which it may duly delegate the authority granted in this Section B(ii) of Article IV) is hereby empowered to authorize the issuance from time to time of all or any of the shares of Preferred Stock in one or more series, for such consideration and for such corporate purposes as the Board of Directors may from time to time determine, and to establish from time to time for each such series the number of shares to be included in each such series and to fix the designations, powers, rights and preferences of the shares of each such series, and the qualifications, limitations and restrictions thereof to the fullest extent now or hereafter permitted by this Certificate and the laws of the State of Delaware, including, without limitation, voting rights (if any), dividend rights, dissolution rights, conversion rights, exchange rights and redemption rights thereof, as shall be stated and expressed in a resolution or resolutions adopted by the Board of Directors (or such committee thereof) providing for the issuance of such series of Preferred Stock. Each series of Preferred Stock shall be distinctly designated.

C. The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate (including as required in any Preferred Stock Designation).

ARTICLE V.  
BOARD OF DIRECTORS

A. Except as otherwise provided by applicable law or this Certificate, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

B. The total number of directors shall be as determined from time to time exclusively by the Board of Directors; provided that, at any time Sorrento Therapeutics, Inc. (together with its Affiliates (as defined below), subsidiaries, successors and assigns (other than the Corporation and its subsidiaries), "**Sorrento Therapeutics, Inc.**") beneficially owns, in the aggregate, at least 50% in voting power of the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, the stockholders may also fix the number of directors by resolution adopted by the stockholders, in each case, subject to the rights of any holders of Preferred Stock to elect directors pursuant to any Preferred Stock Designation. Election of directors need not be by written ballot unless the bylaws of the Corporation (as the same may be amended and/or restated from time to time, the "**Bylaws**") shall so require. As used in this Article V only, the term "**Affiliate**" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another Person, and the term "**Person**" means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

C. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the Board of Directors of the Corporation shall be divided into three classes designated as Class I, Class II and Class III, respectively. The Board of Directors may assign members of the Board of Directors already in office to such classes. To the extent practicable, the Board of Directors shall assign an equal number of directors to Class I, Class II and Class III. At the first annual meeting of stockholders after the filing of this Certificate, the terms of the Class I directors shall expire, and Class I directors shall be elected for a full term of office to expire at the third succeeding annual meeting of stockholders after their election. At the second annual meeting of stockholders, the terms of the Class II directors shall expire, and Class II directors shall be elected for a full term of office to expire at the third succeeding annual meeting of stockholders after their election. At the third annual meeting of stockholders, the terms of the Class III directors shall expire, and Class III directors shall be elected for a full term of office to expire at the third succeeding annual meeting of stockholders after their election. At each succeeding annual meeting of stockholders, directors elected to succeed the directors of the class whose terms expire at such meeting shall be elected for a full term of office to expire at the third succeeding annual meeting of stockholders after their election. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as practicable, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

D. Except as otherwise required by law or this Certificate, any vacancy resulting from the death, resignation, removal or disqualification of a director or other cause, or any newly created directorship in the Board of Directors, may be filled by a majority of the directors then in office, although less than a quorum, by the sole remaining director, or by the stockholders of the Corporation; provided, however, that from and after the Trigger Event (as defined below), any vacancy resulting from the death, resignation, removal or disqualification of a director or other cause, or any newly created directorship in the Board of Directors, shall be filled only by a majority of the directors then in office, although less than a quorum, or by the sole remaining director, and shall not be filled by the stockholders of the Corporation, in each case, subject to the rights of the holders of any series of Preferred Stock. Except as otherwise provided by this Certificate, a director elected to fill a vacancy or newly created directorship shall hold office until the annual meeting of stockholders for the election of directors of the class to which he or she has been appointed and until his or her successor has been duly elected and qualified, subject, however, to such director's earlier death, resignation, retirement, removal or disqualification.

E. Except as otherwise required by law or this Certificate, and subject to the rights of the holders of any series of Preferred Stock, directors may be removed with or without cause by the affirmative vote of the holders of a majority in voting power of the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of such directors; provided, however, that, from and after the Trigger Event (as defined below) any such director or all such directors may be removed only for cause and only by the affirmative vote of the holders of at least 66 2/3% in voting power of all the then-outstanding shares of stock of the Corporation entitled to vote thereon, voting together as a single class.

ARTICLE VI.  
CONSENT OF STOCKHOLDERS IN LIEU OF MEETING; SPECIAL MEETINGS OF STOCKHOLDERS

A. Any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of stockholders; provided, that prior to the Trigger Event, any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, is signed by or on behalf of the holders of record of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, is delivered to the Corporation in accordance with the DGCL, in each case, subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock. For purposes of this Certificate, “*Trigger Event*” means, following the receipt by Sorrento Therapeutics, Inc. of the shares of Common Stock and Preferred Stock to which it is entitled under that certain Agreement and Plan of Merger, dated as of March 17, 2022 (as may be amended or restated from time to time), by and among the Corporation, Vantage Merger Sub Inc., a Delaware corporation, and Scilex Holding Company, a Delaware corporation, the time that Sorrento Therapeutics, Inc. and its Affiliates (as defined below) first cease to beneficially own more than 50% in voting power of the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors.

B. Special meetings of stockholders for the transaction of such business as may properly come before the meeting may only be called by order of the Chairman of the Board of Directors, the Board of Directors (pursuant to a resolution adopted by the affirmative vote of a majority of the authorized number of directors constituting the Board of Directors, whether or not there exist any vacancies or other unfilled seats in previously authorized directorships) or the Chief Executive Officer of the Corporation; provided, however, that at any time prior to the Trigger Event, special meetings of the stockholders of the Corporation for any purpose or purposes shall also be called by or at the direction of the Board of Directors or the Chairman of the Board of Directors at the request of Sorrento Therapeutics, Inc., in each case, subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock. Any such special meeting of stockholders shall be held at such date, time, and place, within or without the State of Delaware, as may be specified by such order. The Board of Directors may, in its sole discretion, determine that special meetings of stockholders shall not be held at any place but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the DGCL. If such order fails to fix such place, the meeting shall be held at the principal executive offices of the Corporation.

ARTICLE VII.  
LIMITATION OF LIABILITY

Except to the extent that the DGCL prohibits the elimination or limitation of liability of directors or officers, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director or officer, as applicable, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director or officer of the Corporation for or with respect to any acts or omissions of such director or officer occurring prior to such amendment or repeal. If the DGCL is amended to permit further elimination or limitation of the personal liability of directors or officers, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL as so amended.

ARTICLE VIII.  
CORPORATE OPPORTUNITIES AND COMPETITION

A. In recognition and anticipation that (i) certain directors, officers, principals, partners, members, managers, employees, agents and/or other representatives of Sorrento Therapeutics, Inc. and its Affiliates may serve as directors, officers or agents of the Corporation and its Affiliates, and (ii) Sorrento Therapeutics, Inc. and its Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation and Affiliates, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation and its Affiliates, directly or indirectly, may engage, the provisions of this Article VIII are set forth to regulate and define the conduct of certain affairs of the Corporation and its Affiliates with respect to certain classes or categories of business opportunities as they may involve Sorrento Therapeutics, Inc. and its Affiliates and any person or entity who, while a stockholder, director, officer or agent of the Corporation or any of its Affiliates, is a director, officer, principal, partner, member, manager, employee, agent and/or other representative of Sorrento Therapeutics, Inc. and its Affiliates (each, an “*Identified Person*”), on the one hand, and the powers, rights, duties and liabilities of the Corporation and its Affiliates and its and their respective stockholders, directors, officers and agents in connection therewith, on the other.

B. To the fullest extent permitted by law (including, without limitation, the DGCL), and notwithstanding any other duty (contractual, fiduciary or otherwise, whether at law or in equity), each Identified Person (i) shall have the right to, and shall have no duty (contractual, fiduciary or otherwise, whether at law or in equity) not to, directly or indirectly engage in and possess interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business as the Corporation or any of its Affiliates or deemed to be competing with the Corporation or any of its Affiliates, on its own account, or in partnership with, or as a direct or indirect equity holder, controlling person, stockholder, director, officer, employee, agent, Affiliate (including any portfolio company), member, financing source, investor, director or indirect manager, general or limited partner or assignee of any other person or entity with no obligation to offer to the Corporation or its subsidiaries or other Affiliates the right to participate therein and (ii) shall have the right to invest in, or provide services to, any person that is engaged in the same or similar business activities as the Corporation or its Affiliates or directly or indirectly competes with the Corporation or any of its Affiliates. To the fullest extent permitted by applicable law, but subject to the immediately preceding sentence, neither the Corporation nor any of its Subsidiaries shall have any rights in any business interests, activities or ventures of any Identified Person, and the Corporation hereby waives and renounces any interest or expectancy therein, except with respect to opportunities offered solely and expressly to officers of the Corporation in their capacity as such.

C. Solely for purposes of this Article VIII, (i) “*Affiliate*” shall mean (a) with respect to Sorrento Therapeutics, Inc., any person or entity that, directly or indirectly, is controlled by Sorrento Therapeutics, Inc., controls Sorrento Therapeutics, Inc., or is under common control with Sorrento Therapeutics, Inc., but excluding (1) the Corporation, and (2) any entity that is controlled by the Corporation (including its direct and indirect subsidiaries), and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) “*Person*” shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

ARTICLE IX.  
EXCLUSIVE FORUM

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks subject matter jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack subject matter jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom, shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee or stockholder of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation or any current or former director, officer, employee or stockholder of the Corporation arising pursuant to any provision of the DGCL or of this Certificate or the Bylaws (as either may be amended and/or restated from time to time), (iv) any claim or cause of action seeking to interpret, apply, enforce or determine the validity of this Certificate or the Bylaws (each as may be amended from time to time, including any right, obligation or remedy thereunder), (v) any action or proceeding asserting a claim against the Corporation or any current or former director, officer, employee or stockholder of the Corporation as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware, or (vi) any action asserting an “internal corporate claim,” as that term is defined in Section 115 of the DGCL. This Article IX.A. shall not apply to claims arising under the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933.

C. Any person or entity purchasing or otherwise acquiring any interest in shares of stock of the Corporation shall be deemed to have notice of and, to the fullest extent permitted by law, to have consented to the provisions of this Article IX.

ARTICLE X.  
SECTION 203 OF THE DGCL

The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL until the occurrence of a Trigger Event; whereupon, the Corporation shall immediately and automatically, without further action on the part of the Corporation or any holder of stock of the Corporation, become governed by Section 203 of the DGCL, except that the restrictions on business combinations of Section 203 of the DGCL will not apply to Sorrento Therapeutics, Inc. or its current or future Affiliates regardless of the percentage of ownership of the total voting power of all the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors beneficially owned by them.

ARTICLE XI.  
AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS

A. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate, in the manner now or hereafter prescribed by this Certificate and the DGCL, and all rights, preferences and privileges herein conferred upon stockholders by and pursuant to this Certificate in its current form or as hereafter amended are granted subject to the rights reserved in this Article XI. Notwithstanding the foregoing, from and after the occurrence of the Trigger Event, notwithstanding any other provisions of this Certificate or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any greater or additional vote or consent required hereunder (including any vote of the holders of any particular class or classes or series of stock required by law or by this Certificate or any Preferred Stock Designation), the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class, shall be required to alter, amend or repeal Articles V (Board of Directors), VI (Consent of Stockholders in Lieu of Meeting; Special Meetings of Stockholders), VII (Limitation of Liability), VIII (Corporate Opportunities and Competition), IX (Exclusive Forum), X (Section 203 of the DGCL) and this Article XI, and no other provision may be adopted, amended or repealed that would have the effect of modifying or permitting the circumvention of the provisions set forth in any of such Articles.

B. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter and repeal the Bylaws without the consent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate. Any adoption, amendment or repeal of the Bylaws of the Corporation by the Board of Directors shall require the approval of a majority of the total authorized number of directors. From and after the occurrence of the Trigger Event, notwithstanding any other provisions of this Certificate or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any additional or greater vote or consent required hereunder (including any vote of the holders of any particular class or classes or series of stock required by law or by this Certificate or any Preferred Stock Designation), the affirmative vote of the holders of at least 66 2/3% of the voting power of the then-outstanding shares of stock entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend or repeal, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

**FOUR:** This Restated Certificate of Incorporation has been duly adopted and approved by the Board of Directors of the Corporation in accordance with the provisions of Section 245 of the DGCL.



**IN WITNESS WHEREOF**, the Corporation has caused this Restated Certificate of Incorporation to be signed by its Chief Executive Officer this 10th day of November, 2022.

**Scilex Holding Company**

By: /s/ Jeffrey Chi

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Jeffrey Chi  
Chief Executive Officer

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 10:11 AM 11/10/2022  
FILED 10:11 AM 11/10/2022  
SR 20223986772 - File Number 7129127

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**CERTIFICATE OF DESIGNATIONS  
OF  
SCILEX HOLDING COMPANY**

**a Delaware corporation**

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**(Pursuant to Section 151 of the  
General Corporation Law of the State of Delaware)**

Scilex Holding Company, a Delaware corporation (the "**Corporation**"), does hereby certify that pursuant to the authority conferred upon the Corporation's board of directors (together with any duly authorized committee thereof, the "**Board of Directors**") by the provisions of the Corporation's Certificate of Incorporation, which authorizes the issuance of up to 45,000,000 shares of preferred stock, par value \$0.0001 per share (the "**Preferred Stock**"), the following resolutions were duly adopted by the Board of Directors on November 7, 2022:

RESOLVED, that the issuance of shares of Preferred Stock is hereby authorized and the designations, powers, rights and preferences and qualifications, limitations or restrictions thereof are hereby fixed as follows:

## SERIES A PREFERRED STOCK

1. **Number and Designation.** 29,057,097 shares of the Preferred Stock shall be designated as “Series A Preferred Stock” (the “*Series A Preferred Stock*”).
2. **Rank.** The Series A Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution or winding-up of the Corporation, rank:
  - (a) senior to the Common Stock (as defined in Section 10), and to all other classes or series of capital stock of the Corporation, except for any such other class or series, the terms of which expressly provide that it ranks on a parity with the Series A Preferred Stock as to dividend rights and rights on liquidation, dissolution or winding-up of the Corporation (together with any securities, options, warrants or other rights convertible into, exchangeable for or exercisable to acquire any such capital stock, the “*Junior Securities*”); and
  - (b) on a parity with each class or series of capital stock of the Corporation, the terms of which expressly provide that it ranks on a parity with the Series A Preferred Stock as to dividend rights and rights on liquidation, dissolution or winding-up of the Corporation (together with any securities, options, warrants or other rights convertible into, exchangeable for or exercisable to acquire any such capital stock, the “*Parity Securities*”).
3. **Dividends.** The Series A Preferred Stock will not be entitled to dividends unless the Corporation pays dividends (whether in cash or other property) to holders of outstanding shares of Common Stock. Holders of Series A Preferred Stock shall be entitled to receive, for each share of Series A Preferred Stock, when, as and if declared by the Board of Directors, to the fullest extent permitted by law to the same extent and on the same basis as and contemporaneously with dividends and distributions as declared by the Board of Directors with respect to shares of Common Stock in an amount equal to the product of (i) the number of shares of Common Stock that such share of Series A Preferred Stock would otherwise be convertible into pursuant to a Deemed Conversion (as defined in Section 5(a)) on the record date for the dividend or distribution on the Common Stock and (ii) the dividend or distribution payable on a share of the Common Stock. Dividends payable pursuant to this Section 3 shall be payable to the holders of record of shares of Series A Preferred Stock as they appear on the Corporation’s stock register at the close of business on the same record date as is applicable to the Common Stock, which shall be not more than 60 days before the applicable dividend payment date, as may be fixed by the Board of Directors. The Corporation shall provide 10 days prior written notice to the holders of Series A Preferred Stock of any applicable record date.
4. **Liquidation Preference.**
  - (a) In the event of any Change of Control (as defined in Section 10), liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the Corporation’s property or assets (whether capital or surplus) shall be made to or set apart for the holders of Junior Securities, the holders of Series A Preferred Stock shall be entitled to receive an amount per share of Series A

Preferred Stock equal to the greater of (i) \$10.00 (which amount shall be appropriately adjusted in the event of any stock split, stock combination or other similar recapitalization of the Series A Preferred Stock) (the “*Stated Value*”) and (ii) the amount and type of consideration such share of Series A Preferred Stock would be entitled to receive pursuant to the Change of Control, liquidation, dissolution or winding-up of the Corporation assuming that such share had been converted into shares of Common Stock in a Deemed Conversion. If, upon any Change of Control, liquidation, dissolution or winding-up of the Corporation, the Corporation’s assets, or proceeds thereof, distributable among the holders of Series A Preferred Stock and any Parity Securities are insufficient to pay in full the aggregate amount of the liquidation preference payable in respect of all outstanding shares of Series A Preferred Stock and Parity Securities, such assets or the proceeds thereof shall be distributed among the holders of the Series A Preferred Stock and Parity Securities ratably in proportion to the respective amounts of the liquidation preference that would be payable on such shares of Series A Preferred Stock and Parity Securities if all such amounts were paid in full.

(b) Subject to the rights of the holders of any Parity Securities, after payment shall have been made in full to the holders of Series A Preferred Stock pursuant to this Section 4, the holders of Junior Securities shall be entitled to receive all remaining assets of the Corporation, subject to the respective terms applying thereto, in the same type of consideration that the holders of Series A Preferred Stock received pursuant to this Section 4.

#### 5. **No Conversion Rights.**

(a) The Series A Preferred Stock is not convertible into Common Stock or any other equity of the Corporation; provided, however, a number of the rights, preferences and privileges of the Series A Preferred Stock set forth in this Certificate are determined based on an as-converted-to-Common Stock basis or otherwise assume that the shares of Series A Preferred Stock are converted into shares of Common Stock. Accordingly, the number of shares of Common Stock that each share of Series A Preferred Stock is deemed to be (or otherwise being treated as) converted into for the purpose of affecting the various rights, preferences and privileges of the Series A Preferred Stock set forth in this Certificate (a “*Deemed Conversion*”), whether in connection with a Change of Control or otherwise, shall be equal to the result obtained by dividing (i) the Stated Value by (ii) \$10.00, adjusted as provided in Section 6 (each such price, a “*Conversion Price*”).

(b) Unless otherwise explicitly set forth herein, each Deemed Conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the applicable event requiring the determination of a Deemed Conversion actually occurs.

(c) In connection with any Deemed Conversion, no fractional shares of Common Stock shall be accounted for in such Deemed Conversion. In lieu thereof the Corporation shall round up the number of shares to be treated as having been converted to the nearest whole number and all shares of Series A Preferred Stock shall be treated as having been converted for the applicable Deemed Conversion.

6. **Anti-Dilution Adjustments.** The Conversion Price shall be subject to the adjustments set forth in this Section 6.

(a) Subdivisions and Combinations of the Common Stock. If the Corporation shall subdivide or split the outstanding shares of Common Stock into a greater number of shares or combine or reclassify the outstanding shares of Common Stock into a smaller number of shares, then the Conversion Price in effect immediately prior to the open of business on the effective date of such subdivision, split, combination or reclassification shall be adjusted by dividing such Conversion Price by the following fraction:

$$\frac{OS1}{OS0}$$

where,

OS1 = the number of shares of Common Stock outstanding immediately after such subdivision, split, combination or reclassification; and

OS0 = the number of shares of Common Stock outstanding immediately prior to such subdivision, split, combination or reclassification.

(b) Issuer Tender, Exchange Offers. If the Corporation or any of its subsidiaries successfully completes a tender or exchange offer for the Common Stock where the cash and fair value of any other consideration included in the payment per share of the Common Stock exceeds the Closing Sale Price of the Common Stock on the Trading Day (as defined in Section 10) immediately following the expiration date of the tender or exchange offer, then the Conversion Price in effect at the close of business on the expiration date of the tender or exchange offer shall be adjusted by dividing such Conversion Price by the following fraction:

$$\frac{AC + (SP1 \times OS1)}{SP1 \times OS0}$$

where,

AC = the aggregate cash and fair value of any other consideration payable for shares purchased in the tender or exchange offer;

SP1 = the Closing Sale Price of Common Stock on the Trading Day immediately following the expiration date of the tender or exchange offer;

OS1 = the number of shares of Common Stock outstanding immediately after the expiration of the tender or exchange offer (after giving effect to the purchase or exchange of all shares purchased or exchanged in the tender or exchange offer); and

OS0 = the number of shares of Common Stock outstanding immediately prior to the expiration of the tender or exchange offer (prior to giving effect to the purchase or exchange of all shares purchased or exchanged in the tender or exchange offer).

In the event that the Corporation, or one of its subsidiaries, is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Corporation, or such subsidiary, is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Price shall be readjusted to be such Conversion Price that would then be in effect if such tender offer or exchange offer had not been made. Except as set forth in the preceding sentence, if the application of this Section 6(b) to any tender offer or exchange offer would result in an increase in the Conversion Price, no adjustment shall be made for such tender offer or exchange offer under this Section 6(b).

(c) Rights Plan. To the extent that the Corporation has a rights plan in effect with respect to the Common Stock and prior to the time of the Deemed Conversion, the rights have separated from the shares of Common Stock, the Conversion Price in effect at the time of separation shall be adjusted as if the Corporation had made a distribution to all holders of Common Stock by dividing such Conversion Price by the following fraction, subject to readjustment in the event of the expiration, termination, or redemption of such rights:

$$\frac{SP0}{SP0 - FMV}$$

where,

SP0 = the Current Market Price (as defined in Section 10) per share of Common Stock on the Trading Day immediately preceding the ex-date; and

FMV = the fair value of the portion of the distribution applicable to one share of Common Stock on the Trading Day immediately preceding the ex-date.

(d) Certain Issuance or Sale of Common Stock or Derivatives. If the Corporation shall issue or sell shares of Common Stock (or any securities, options, warrants or other rights convertible, exchangeable or exercisable to acquire such stock) without consideration or at a consideration per share of Common Stock (calculated based on the aggregate proceeds to the Corporation upon issuance and any additional consideration payable to the Corporation upon any such conversion, exchange or exercise) that is less than the Conversion Price in effect at the close of business on the day immediately preceding such issuance, then such Conversion Price shall be adjusted by multiplying such Conversion Price by the following fraction:

$$\frac{(AC / CP) + OS0}{OS1}$$

where,

AC = the aggregate proceeds to the Corporation upon issuance and any additional consideration payable to the Corporation upon any conversion, exchange or exercise based on the maximum number of shares of Common Stock issuable by the Corporation in connection therewith;

- CP = the Conversion Price in effect at the close of business on the day immediately preceding such issuance;
- OS0 = the number of shares of Common Stock outstanding immediately prior to such issuance; and
- OS1 = the sum of the number of shares of Common Stock outstanding immediately prior to such issuance and the total number of shares of Common Stock issued or subject to issuance upon conversion, exchange or exercise of all securities, options, warrants or rights issued.

In the event that any portion of the aggregate consideration received by the Corporation in connection with the issuance or sale is not received in cash but in securities or other property, the above adjustment shall be made considering the fair value of such security or other property.

The adjustment of the Conversion Price pursuant to this Section 6(d) shall not apply to any issuance of shares of Common Stock (or any securities, options, warrants or other rights convertible, exchangeable or exercisable to acquire such stock): (i) to all holders of Common Stock; (ii) in connection with any stock subdivisions, splits, combinations or reclassifications for which an adjustment to the Conversion Price is made pursuant to Section 6(a); or (iii) in connection with any employment contract or benefit plan or arrangement with or for the benefit of employees, officers or directors of the Corporation or any of its subsidiaries approved by the Board of Directors.

(e) Certain Determinations. For purposes of the computation of any adjustments required under this Section 6, the following shall apply:

(i) Adjustments shall be made successively whenever any event giving rise to such an adjustment shall occur.

(ii) Fair value shall be determined by the Board of Directors in good faith; *provided* that if the holders of 25% or more of the outstanding shares of Series A Preferred Stock shall object to any such determination, such fair value shall be determined by an independent appraiser selected by such holders and reasonably satisfactory to the Corporation. The fees and expenses of such independent appraiser shall be paid by the Corporation. The holders of Series A Preferred Stock shall be notified promptly of any consideration other than cash to be received or paid by the Corporation and furnished with a description of the consideration and the fair value thereof, as determined in accordance with the foregoing provisions.

(iii) All adjustments to the Conversion Price shall be calculated to the nearest cent (with \$0.005 rounded up to \$0.01).

(iv) No adjustment in the Conversion Price will be made unless such adjustment would require an increase or decrease of at least one percent therein; *provided*, that any adjustments which by reason of this clause are not required to be made shall be carried forward and taken into account in any subsequent adjustment.

(f) Certificates as to Adjustment. Upon the occurrence of each adjustment to the Conversion Price, the Corporation shall promptly compute the Conversion Price in accordance with this Section 6 and furnish to each holder of Series A Preferred Stock an officer's certificate setting forth the Conversion Price and setting forth in reasonable detail the facts upon which such adjustment is based. In the case of any action or event that causes an adjustment of the Conversion Price pursuant to this Section 6 and requires or results in the fixing of a record date, the Corporation shall, at least five days prior to such record date, give written notice to each holder of Series A Preferred Stock specifying the record date. Failure to deliver such notice, or any defect therein, shall not affect the legality or validity of any such action or event.

## 7. Voting Rights.

(a) *General Preferred Stock Voting Rights.* Except as otherwise required by law or as set forth in this Section 7, the holders of shares of Series A Preferred Stock will be entitled to vote, together with the holders of shares of Common Stock and not separately as a class, on all matters upon which holders of shares of Common Stock have the right to vote. The holders of shares of Series A Preferred Stock will be entitled to one vote for each share of Common Stock that such share of Series A Preferred Stock would otherwise be convertible into pursuant to a Deemed Conversion on the record date for the determination of the stockholders entitled to vote.

(b) *Class Voting Rights.* The Corporation shall not, and shall not permit its subsidiaries to, without the affirmative vote of at least a majority of the outstanding shares of Series A Preferred Stock (whether by written consent or at a meeting of the holders of Series A Preferred Stock duly called for such purpose):

(i) change the shares of Series A Preferred Stock (whether by merger, consolidation, reclassification, operation of law or otherwise) into cash, securities or other property except in accordance with the terms hereof or, in the case of a merger or consolidation of the Corporation in which it is not the surviving or resulting entity, the Series A Preferred Stock may be exchanged for an equivalent number of shares of preferred stock of the surviving or resulting entity, transferee or ultimate parent of such party, with terms substantially the same as the Series A Preferred Stock;

(ii) issue any shares of Series A Preferred Stock other than in accordance with that certain Agreement and Plan of Merger, dated as of March 17, 2022, by and among the Corporation (previously Vickers Vantage Corp. I), Vantage Merger Sub, Inc., a Delaware corporation, and Scilex, Inc. (previously Scilex Holding Corporation), a Delaware corporation, as amended (the "*Merger Agreement*");

(iii) create, authorize or issue any Parity Security or other equity security the terms of which provide that it ranks senior to the Series A Preferred Stock with respect to dividend rights or rights upon liquidation, dissolution or winding-up of the Corporation, or increase the authorized amount of any such other class or series; or

(iv) amend, modify or repeal any provision of the Corporation's Certificate of Incorporation (the "*Certificate of Incorporation*"), bylaws of the Corporation or this Certificate of Designations, whether by merger, consolidation, reclassification, by operation of law or otherwise, that adversely affects the holders of shares of Series A Preferred Stock.

8. **Special Meetings.** For so long as the Sorrento Group beneficially owns any shares of Series A Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes shall be called by or at the direction of the Board of Directors or the Chairman of the Board of Directors at the request of Sorrento Therapeutics, Inc. If a special meeting is called at the request of Sorrento Therapeutics, Inc., then the request shall be in writing, specifying the requested date, time and place of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered or electronic mail to the Chairman of the Board of Directors. Any such special meeting of stockholders shall be held at such date, time, and place, within or without the State of Delaware, as may be specified by order of the Board of Directors or the Chairman of the Board of Directors. The Board of Directors may, in its sole discretion, determine that special meetings of stockholders shall not be held at any place but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the DGCL. If such order fails to fix such place, the meeting shall be held at the principal executive offices of the Corporation.



9. **Remedies.** Nothing herein shall limit the right of a holder of Series A Preferred Stock to pursue actual damages for any failure by the Corporation to comply with the terms of this Certificate of Designations and a holder shall have the right to pursue all remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. For the avoidance of doubt, any of the actions prohibited by or taken in contravention of the provisions herein, including by Section 7, shall be null and void ab initio and of no force or effect.

10. **Certain Definitions.** As used in this Certificate of Designations, the following terms shall have the meanings defined in this Section 11.

**“Certificate”** means this Certificate of Designations.

**“Change of Control”** shall be deemed to have occurred if any of the following events shall have occurred after the original issuance of the Series A Preferred Stock:

- (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act (as defined in Section 11)) (other than Sorrento Therapeutics, Inc. or its affiliates) acquires the beneficial ownership (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the total voting power of the Corporation’s outstanding voting stock; or
- (ii) the consummation of (x) any merger, consolidation, share exchange or other similar transaction involving the Corporation or any of its subsidiaries, (y) any sale, lease, exchange or other transfer in one transaction or a series of related transactions of all or substantially all of the consolidated assets of the Corporation and its subsidiaries, taken as a whole, to any Person other than one of the Corporation’s subsidiaries or, (z) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a split, subdivision or combination), in each case, other than a transaction in which all of the persons that “beneficially owned,” directly or indirectly, the voting shares of capital stock of the Corporation immediately prior to such transaction beneficially own, directly or indirectly, voting shares of capital stock representing a majority of the total voting power of all outstanding classes of capital stock of the surviving or resulting entity, transferee or ultimate parent of such party in the same relative proportions; or
- (iii) individuals who, immediately following the Effective Time (as defined in the Merger Agreement), are members of the Board of Directors (the **“Incumbent Board”**) cease for any reason to constitute at least a majority of the members of the whole Board of Directors; provided, however, that if the appointment or election (or nomination for election) of any new member of the Board of Directors was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Certificate, be considered as a member of the Incumbent Board.

**“Closing Sale Price”** of the Common Stock on any day means: (i) if the shares of Common Stock are listed on The Nasdaq Stock Market LLC, the closing sale price per share of Common Stock (or if no closing sale price is reported, the last reported sale price) on such date on The Nasdaq Stock Market LLC; (ii) if the shares of Common Stock are not listed on The Nasdaq Stock Market LLC, the closing sale price per share of Common Stock (or if no closing sale price is reported, the last reported sale price) on such date in composite trading for the principal United States national or regional securities exchange on which the shares of Common Stock are then listed; (iii) if the shares of Common Stock are not listed on a United States national or regional securities exchange, the last quoted bid price per share of Common Stock in the over-the-counter market on the relevant date as reported by Pink OTC Markets Inc. or a similar organization; or (iv) if the shares of Common Stock are not quoted as described in clause (iii) above, the market price per share of Common Stock on the relevant date as determined in good faith by the Board of Directors, subject to Section 6(e)(ii) hereof.

**“Common Stock”** means the Corporation’s common stock, par value \$0.0001 per share.

**“Current Market Price”** as of any determination date means the average daily Closing Sale Prices of the Common Stock for the 10 consecutive Trading Days ending on the earlier of such determination date and, if applicable, the day before the ex-date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. **“ex-date”** (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision, split, combination or reclassification of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision, split, combination or reclassification becomes effective. If another issuance, distribution, subdivision, split, combination or reclassification to which Section 6 applies occurs during the period applicable for calculating the “Current Market Price” pursuant to this definition, the “Current Market Price” shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period.

**“Exchange Act”** shall mean the United States Securities Exchange Act of 1934, as amended.

**“Person”** means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**“Trading Day”** is any day during which trading in securities generally occurs on The Nasdaq Stock Market LLC or, if the Common Stock is not listed on The Nasdaq Stock Market LLC, on the principal United States national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

11. **Further Assurances.** The Corporation shall take such actions as are reasonably required in order for the Corporation to satisfy its obligations under this Certificate, including, without limitation, using reasonable best efforts in making any filings, in each case as required pursuant to applicable law or the listing requirements (if any) of any national securities exchange on which any class or series of capital stock of the Corporation is then listed or traded.

12. **Amendment.** This Certificate may only be altered, amended, or repealed by the affirmative vote of a majority of the whole Board of Directors and holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a single class.

13. **Waiver.** Any provision in this Certificate to the contrary notwithstanding, any provision contained herein and any right of the holders of Series A Preferred Stock granted hereunder may be waived as to all shares of Series A Preferred Stock (and the holders thereof) upon the written consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

14. **Severability.** If any term of Series A Preferred Stock set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other terms set forth herein which can be given effect without the invalid, unlawful or unenforceable term will, nevertheless, remain in full force and effect, and no term herein set forth will be deemed dependent upon any other such term unless so expressed herein.

*[Signature Page to Follow]*

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations to be duly executed and acknowledged by its undersigned duly authorized officer this 10th day of November, 2022.

**SCILEX HOLDING COMPANY**

By: /s/ Jeffrey Chi

Name: Jeffrey Chi

Title: Chief Executive Officer

*[Signature Page to Certificate of Designations]*

**BYLAWS**  
**OF**  
**SCILEX HOLDING COMPANY**  
**(a Delaware corporation)**

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**BYLAWS  
OF  
SCILEX HOLDING COMPANY**

**ARTICLE I**

**OFFICES**

SECTION 1. **Registered Office.** The registered office of Scilex Holding Company (the “*Corporation*”) shall be fixed in the Corporation’s certificate of incorporation, as the same may be amended and/or restated from time to time (the “*Certificate of Incorporation*”).

SECTION 2. **Other Offices.** The Corporation may, in addition to its registered office in the State of Delaware, have other offices at any place or places, either within or outside the State of Delaware, as the Corporation’s board of directors (the “*Board of Directors*”) shall from time to time determine or the business of the Corporation may from time to time require.

**ARTICLE II**

**STOCKHOLDERS**

SECTION 1. **Time and Place of Meetings.** Meetings of stockholders shall be held at any place within or outside the State of Delaware, on such date and at such time as designated by (or in the manner determined by) the Board of Directors. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place but may be held instead solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “*DGCL*”). In the absence of any such designation or determination, stockholders’ meetings shall be held at the Corporation’s principal executive office.

SECTION 2. **Annual Meetings.** The annual meeting of stockholders of the Corporation for the election of directors and for the transaction of such other business as may properly come before the meeting in accordance with Section 9 of this Article II shall be held each fiscal year on such date, and at such time and place, if any, within or outside the State of Delaware, or by means of remote communications, as the Board of Directors (or its designee) shall determine.

SECTION 3. **Special Meetings.** Subject to the rights of the holders of any class or series of Preferred Stock (as hereinafter defined), special meetings of the stockholders may only be called in the manner provided in the Certificate of Incorporation as then in effect and may be held at such place either within or outside the State of Delaware, and at such time and date as provided in the Certificate of Incorporation. The Board of Directors may, in its sole discretion, determine that special meetings of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the DGCL.

#### SECTION 4. Notice of Meetings.

(a) Unless otherwise provided by law, the Certificate of Incorporation or these Bylaws, the notice of any meeting of stockholders shall be given in accordance with either Section 4(b) of this Article II or Article XV of these Bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notice shall specify the place, if any, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Notice of any meeting of stockholders shall be deemed given:

- (1) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Corporation's records;
- (2) if delivered by courier service, notice shall be deemed given at the earlier of when the notice is received or left at such stockholder's address as it appears on the records of the Corporation; or
- (3) if electronically transmitted, as provided in Article XV of these Bylaws.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

#### SECTION 5. Quorum; Adjournment; Postponement.

(a) Except as otherwise provided by law, the Certificate of Incorporation, a quorum for the transaction of business at any meeting of stockholders shall consist of the holders of record of a majority of the voting power of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at a meeting of stockholders, present in person, or by remote communication, if applicable, or represented by proxy; provided that, when specified business is to be voted on by a class or series of stock voting as a class, the holders of a majority of the shares of such class or series shall constitute a quorum of such class or series for the transaction of such business.

(b) Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the Chairman of the meeting or by the affirmative vote of a majority of the voting power of the issued and outstanding shares of the capital stock of the Corporation entitled to vote at the meeting, present in person, or by remote communication, if applicable, or represented by proxy, whether or not there is a quorum. When a meeting is adjourned to another time or place, unless these Bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, as long as a quorum is present in person or by remote communication or represented by proxy, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for determining the stockholders entitled to vote is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the adjourned meeting as of the record date for determining the stockholders entitled to notice of the adjourned meeting.

(c) Any previously scheduled annual or special meeting of the stockholders may be postponed or adjourned, and any previously scheduled annual or special meeting of the stockholders may be canceled, by resolution of the Board of Directors; provided, however, that with respect to any special meeting of stockholders previously scheduled by the Board of Directors or the Chairman of the Board of Directors at the request of Sorrento Therapeutics, Inc. (as defined in the Certificate of Incorporation), the Board of Directors shall not postpone, reschedule or cancel such special meeting without the prior written consent of Sorrento Therapeutics, Inc. (as defined in the Certificate of Incorporation).

## SECTION 6. Organization.

(a) Meetings of stockholders shall be presided over by such person as the Board of Directors may have designated or, in the absence of such a person, the Chairman, or if none or in the Chairman's absence, the Chief Executive Officer, or in the Chief Executive Officer's absence, a Vice-President, or, if none of the foregoing is present, by a chairman to be chosen by a majority of the stockholders entitled to vote who are present in person or represented by proxy at the meeting. The Secretary of the Corporation or, in the Secretary's absence, an Assistant Secretary, shall act as secretary of every meeting, but if neither the Secretary nor an Assistant Secretary is present, the presiding officer of the meeting shall appoint any person present to act as secretary of the meeting.

(b) The Chairman shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting.

(c) The Chairman shall also conduct the meeting in an orderly manner, rule on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters. The Board of Directors may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the Chairman presiding over any meeting of stockholders shall have the right and authority to convene and (for any reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of the Chairman, are appropriate for the proper conduct of the meeting and the safety of those in attendance. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the Chairman, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the Chairman shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted (if any) to questions or comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting; (viii) restrictions on the use of cell phones, audio or video recording devices and similar devices at the meeting; and (ix) compliance with any state and local laws and regulations concerning safety and security. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at a meeting except in accordance with the procedures set forth in this Section 6 and Section 9 of this Article II. The Chairman, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the provisions of this Section 6 and Section 9 of this Article II, and if the Chairman should so determine that any proposed nomination or business is not in compliance with such sections, the Chairman shall so declare to the meeting that such defective nomination or proposal shall be disregarded.

**SECTION 7. Voting; Proxies; Required Vote.**

(a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 11 of this Article II, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL. Unless the Certificate of Incorporation provides otherwise, each stockholder shall have one (1) vote for each share of stock entitled to vote registered in the name of such stockholder on the books of the Corporation on the applicable record date fixed pursuant to these Bylaws.

(b) At each meeting of stockholders, every stockholder shall be entitled to vote in person or by proxy appointed by instrument in writing, subscribed by such stockholder or by such stockholder's duly authorized attorney in fact (but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period). The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of a telegram, cablegram or other means of electronic transmission, which sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other means of electronic transmission was authorized by the stockholder.

(c) At all duly called or convened meetings of stockholders, at which a quorum is present, for the election of directors, a plurality of the votes cast by the stockholders entitled to vote at the election shall be sufficient to elect a director. All other elections and questions presented to the stockholders at a duly called or convened meeting, at which a quorum is present, shall, unless a different or minimum vote is required by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or any law or regulation applicable to the Corporation or its securities, in which case such different or minimum vote shall be the applicable vote on the matter, be decided by the affirmative vote of the holders of a majority of the votes cast affirmatively or negatively (excluding abstentions) at the meeting by the holders entitled to vote thereon.

**SECTION 8. Inspectors of Election.** The Board of Directors, in advance of any meeting of stockholders, may, and shall if required pursuant to Section 231 of the DGCL or other applicable law, appoint one or more inspectors of election to act at the meeting or any adjournment thereof, and make a written report thereof. If an inspector or inspectors are not so appointed, the person presiding at the meeting may, and shall if required pursuant to Section 231 of the DGCL or other applicable law, appoint one or more inspectors to act at the meeting. In case any person who may be appointed as an inspector fails to appear or act, the vacancy may be filled by appointment made by the Board of Directors in advance of the meeting or at the meeting by the person presiding thereat. Each inspector, if any, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his or her ability. The inspectors, if any, shall determine the number of shares of stock outstanding and the voting power of each, the shares of stock represented at the meeting, the existence of a quorum, and the validity and effect of proxies, and shall receive votes, ballots or consents; hear and determine all challenges and questions arising in connection with the right to vote; count and tabulate all votes, ballots or consents; determine the result; and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the person presiding at the meeting, the inspector or inspectors, if any, shall make a report in writing of any challenge, question or matter determined by such inspector or inspectors and execute a certificate of any fact found by such inspector or inspectors.

**SECTION 9. Advance Notice Procedures for Stockholder Nominations of Directors and Other Business.**

(a) Annual Meetings of Stockholders.

(1) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, nominations of persons for election to the Board of Directors or proposal of other business must be (A) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any committee thereof), (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any committee thereof), or (C) otherwise properly brought before the meeting by any stockholder of the Corporation who (i) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in this Section 9 is delivered to the Secretary of the Corporation and at the time of the annual meeting, (ii) is entitled to vote at the meeting, and (iii) has complied with the notice procedures set forth in this Section 9 as to such business or nomination. Clause (C) of the preceding sentence shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*") and included in the Corporation's notice of meeting) before an annual meeting of stockholders. The number of nominees a stockholder may nominate for election at an annual meeting of the stockholders (or in the case of a stockholder giving notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such meeting.

(2) Without qualification or limitation, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of paragraph (a)(1) of this Section 9, the stockholder must (A) have given timely notice thereof in writing and in proper form to the Secretary of the Corporation and any such proposed business, other than the nominations of persons for election to the Board of Directors, must constitute a proper matter for stockholder action, and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 9. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day nor later than the close of business on the ninetieth (90th) day prior to the first anniversary of the preceding year's annual meeting (in the case of the first annual meeting of stockholders held after January 1, 2023, the date of the preceding year's annual meeting of the stockholders shall be deemed to be June 30, 2022); provided, however, that if the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting was first made by the Corporation (such notice within such time periods, "**Timely Notice**"). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(3) To be in proper form for purposes of this Section 9, a stockholder's notice to the Secretary of the Corporation delivered pursuant to this Section 9 must set forth:

A. as to each person, if any, whom the stockholder proposes to nominate for election or reelection as a director (i) all information with respect to such proposed nominee that would be required under Section 9(a)(3)(C) of this Article II if such proposed nominee were the nominating stockholder, (ii) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in contested election, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act, including, without limitation, each proposed nominee's name, age, principal occupation or employment (present and for the five year prior to such stockholder's notice), (iii) such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, (iv) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "**registrant**" for purposes of such rule and the nominee were a director or executive officer of such registrant, (v) a description of any material pending or threatened legal proceedings in which any such stockholder and beneficial owner and each proposed nominee is a party or material participant involving the Corporation or any of its affiliates, officers or directors, (vi) a statement whether each proposed nominee is, or has been within the last three years from the date of the stockholder's notice, an officer or director of a competitor of the Corporation, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended from time to time, (vii) a statement whether each proposed nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the 10 years prior to the date of the stockholder's notice, and (viii) a completed and signed questionnaire, representation and agreement required by Section 10 of this Article II; provided, that the Corporation may require any proposed nominee to furnish such other information as it reasonably may require to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee, including, without limitation, for purposes of serving on one or more committees of the Board;

B. if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the meeting, (i) a brief description of the business desired to be brought before the meeting and any material interest in such business of such stockholder, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made, and (iv) a reasonably detailed description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and

C. as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books, and of such beneficial owner, if any, (ii) (a) the class or series and number of shares of capital stock of the Corporation which are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such stockholder and beneficial owner, except that such stockholder and beneficial owner shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such stockholder and beneficial owner has a right to acquire beneficial ownership at any time in the future, (b) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, including, without limitation, any derivative, swap, hedge, repurchase or so-called "stock borrowing" agreement or arrangement (a "**Derivative Instrument**"), directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (c) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder has a right to vote any shares of any security of the Corporation, (d) any short interest in any security of the Corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (e) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (f) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (g) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household, (iii) a description of any agreement, arrangement or understanding with respect to the nomination or proposal between or among such stockholder and such beneficial owner, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (iv) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (v) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group that intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee or (b) otherwise to solicit proxies from stockholders in support of such proposal or nomination and (vi) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder.

(4) A stockholder providing notice of any nomination proposed to be made, or business proposed to be brought, in each case before an annual meeting, shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 9 shall be true and correct as of the record date for determining stockholders entitled to the notice of the annual meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining stockholders entitled to notice of the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).



(5) Notwithstanding anything in the second sentence of paragraph (a)(2) of this Section 9 to the contrary, in the event that the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 9 and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 9 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(b) Special Meetings of Stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 3 of this Article II. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors, or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who (A) is a stockholder of record of the Corporation at the time the notice provided for in this Section 9 is delivered to the Secretary of the Corporation and at the time of the special meeting, (B) is entitled to vote at the meeting and upon such election, and (C) complies with the notice procedures set forth in this Section 9 as to such nomination. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if a stockholder's notice containing all of the information required by paragraphs (a) (3) and (4) hereof as if the special meeting were an annual meeting with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by this Bylaw) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of: (i) the ninetieth (90th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made by the Corporation of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 9 or the Certificate of Incorporation shall be eligible to be elected at an annual or special meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, the person presiding at the meeting of stockholders shall have the power and duty (A) to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 9 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group that solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (a)(3)(C)(v) of this Section 9), whereby any failure to comply with the representation in clause (a)(3)(C)(v) will cause the nomination or other business to be disregarded; and (B) if any proposed nomination or other business was not made or proposed in compliance with this Section 9, to declare that such nomination shall be disregarded or that such proposed other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 9, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such proposed other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 9, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(2) For purposes of this Section 9, "**public announcement**" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Section 9, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 9; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 9 (including clause (a)(1)(C) and paragraph (b) hereof), and compliance with clause (a)(1)(C) and paragraph (b) of this Section 9 shall be the exclusive means for a stockholder to make nominations or submit other business, as applicable (other than matters brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 9 shall be deemed to affect any rights of (A) stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act or (B) the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation ("**Preferred Stock**") to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

**SECTION 10. Submission of Questionnaire, Representation and Agreement.** To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 9 of this Article II) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a “**Voting Commitment**”) that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such person’s ability to comply, if elected as a director of the Corporation, with such person’s fiduciary duties under applicable law as it presently exists or may hereafter be amended; (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein; and (c) in such person’s individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality, stock ownership, related party and trading policies and guidelines of the Corporation.

**SECTION 11. Fixing Date for Determination of Stockholders of Record.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date for determining stockholders entitled to consent to corporate action in writing without a meeting is fixed by the Board of Directors, (i) when no prior action of the Board of Directors is required by law, the record date for such purpose shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board of Directors is required by law, the record date for such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 12. **List of Stockholders Entitled to Vote**(a) . The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the date of the meeting), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (b) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to the identity of the stockholders entitled to vote in person or by proxy and the number of shares held by each of them, and as to the stockholders entitled to examine the list of stockholders.

**ARTICLE III**  
**BOARD OF DIRECTORS**

SECTION 1. **General Powers.** The business, property and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors. In addition to the powers and authorities by these Bylaws expressly conferred upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these Bylaws required to be exercised or done by the stockholders.

SECTION 2. **Number, Term and Qualification; Remuneration.**

(a) Subject to the Certificate of Incorporation, the number of directors shall be fixed in the manner provided in the Certificate of Incorporation. The term of each director shall be as set forth in the Certificate of Incorporation. Directors need not be stockholders. The directors shall be divided into classes as and to the extent provided in the Certificate of Incorporation, except as otherwise required by applicable law.

(b) The Board of Directors may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation. Directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and Directors who are not employees of the Corporation may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed compensation for committee service.

SECTION 3. **Quorum and Manner of Voting.** Except as otherwise required by law, the Certificate of Incorporation, or in these Bylaws, a majority of the total number of authorized directors constituting the Board of Directors, whether or not there exist any vacancies or other unfilled seats in previously authorized directorships (the "**Whole Board**") shall constitute a quorum for the transaction of business. A majority of the directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and place without notice. The vote of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. To the extent permitted by law, the directors present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

SECTION 4. **Places of Meetings; Conference Telephone Meetings.** Meetings of the Board of Directors may be held at any place within or outside the State of Delaware, as may be fixed from time to time by resolution of the Board of Directors, or as may be specified in the notice of meeting. Members of the Board of Directors, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

SECTION 5. **Regular Meetings**. Regular meetings of the Board of Directors shall be held at such times and places as the Board of Directors shall from time to time by resolution determine. Notice need not be given of regular meetings of the Board of Directors held at times and places fixed by resolution of the Board of Directors.

SECTION 6. **Special Meetings**. Special meetings of the Board of Directors shall be held whenever called by the Chairman of the Board, Chief Executive Officer or a majority of the directors then in office.

SECTION 7. **Notice of Meetings**.

(a) Notice of the time and place of special meetings of the Board of Directors shall be: (1) delivered personally by hand, by courier or by telephone; (2) sent by United States first-class mail, postage prepaid; (3) sent by facsimile; or (4) sent by electronic mail, electronic transmission or other similar means, directed to each director at that director's address, telephone number, facsimile number or electronic mail or other electronic address, as the case may be, as shown on the Corporation's records.

(b) If the notice is (1) delivered personally by hand, by courier or by telephone, (2) sent by facsimile or (3) sent by electronic mail or electronic transmission, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office). Notice need not be given to any director who consents in writing, whether before or after the meeting, or who attends the meeting without protesting prior thereto or at its commencement, the lack of notice to such director.

SECTION 8. **Chairman of the Board**. Except as otherwise provided by law, the Certificate of Incorporation, or in Section 9 of this Article III, the Chairman of the Board of Directors, if there be one, shall preside at all meetings of the Board of Directors and shall have such other powers and duties as may from time to time be assigned by the Board of Directors.

SECTION 9. **Organization**. At all meetings of the Board of Directors, the Chairman, or, if none or in the Chairman's absence or inability to act, the Chief Executive Officer, or, in the Chief Executive Officer's absence or inability to act, any Vice-President who is a member of the Board of Directors, or, if none or in such Vice-President's absence or inability to act, a chairman chosen by the directors, shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board of Directors when present, and, in the Secretary's absence, the presiding officer may appoint any person to act as secretary.

SECTION 10. **Resignation**. Any director may resign at any time upon written notice (including by electronic transmission) to the Chairman or the Corporation's Chief Executive Officer, and such resignation shall take effect upon receipt thereof by the Chairman or Chief Executive Officer, unless otherwise specified in the resignation.

SECTION 11. **Vacancies.** Vacancies occurring in any directorship (whether by death, resignation, retirement, disqualification, removal or other cause) and newly created directorships resulting from any increase in the number of directors shall be filled in accordance with the Certificate of Incorporation. Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

SECTION 12. **Removal of Director.** Directors of the Corporation may be removed in the manner provided in the Certificate of Incorporation and applicable law.

SECTION 13. **Action by Written Consent.** Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if all the directors consent thereto in writing (which may be provided by electronic transmission). After an action is taken, such writing or writings (or electronic transmission or transmissions) shall be filed with the minutes of proceedings of the Board of Directors. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

#### **ARTICLE IV** **COMMITTEES**

SECTION 1. **Appointment.** From time to time, the Board of Directors by a resolution adopted by a majority of the Whole Board may appoint any committee or committees for any purpose or purposes, to the extent lawful, which shall have such duties and powers as shall be determined and specified by the Board of Directors in the resolution of appointment. The Board of Directors may at any time for any reason remove any individual committee member, and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. Nothing herein shall be deemed to prevent the Board of Directors from appointing one or more committees consisting in whole or in part of persons who are not directors of the Corporation; provided, however, that no such committee shall have or may exercise any authority of the Board of Directors.

SECTION 2. **Procedures, Quorum and Manner of Acting.** Each committee shall fix its own rules of procedure and shall meet where and as provided by such rules or by resolution of the Board of Directors. Except as otherwise provided by law, the presence of a majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee. Any director may belong to any number of committees of the Board of Directors. Subject to the Certificate of Incorporation, the Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not constituting a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Each committee shall keep minutes of its proceedings, and actions taken by a committee shall be reported to the Board of Directors.

SECTION 3. **Action by Written Consent.** Any action required or permitted to be taken at any meeting of any committee of the Board of Directors may be taken without a meeting if all the members of the committee consent thereto in writing (which may be provided by electronic transmission). After such action is taken, such writing or writings shall be filed with the minutes of proceedings of the committee.

SECTION 4. **Term; Termination.** In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

SECTION 5. **Reliance on Books and Records.** A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall be fully protected, in the performance of such person's duties, in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

## **ARTICLE V**

### **OFFICERS**

SECTION 1. **Generally.** The officers of the Corporation shall consist of, if and when designated by the Board of Directors, a Chief Executive Officer, a President, a Chief Financial Officer and a Secretary, one or more Vice-Presidents, a Treasurer and such other officers as the Board of Directors may from time to time deem proper. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board of Directors or the Chief Executive Officer. Officers shall be elected by the Board of Directors, which shall consider such appointment at its first meeting after every annual meeting of stockholders. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any two or more offices may be held by the same person. The remuneration of all officers of the Corporation may be fixed by the Board of Directors or in such manner as the Board of Directors shall provide.

SECTION 2. **Resignation; Removal.** Any officer may resign at any time upon written notice (including by electronic transmission) to the Board of Directors, the Chairman of the Board, the Chief Executive Officer or the Secretary, and such resignation shall take effect upon receipt thereof by the Board of Directors, the Chairman of the Board, the Chief Executive Officer, or the Secretary, unless otherwise specified in the resignation. Any officer shall be subject to removal, with or without cause, at any time by vote of a majority of the Whole Board or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

SECTION 3. **Chief Executive Officer.** The Chief Executive Officer shall have such duties as are commonly incident to the office of chief executive or which are delegated to him or her by the Board of Directors. The Chief Executive Officer shall have general management and supervision of the property, business and affairs of the Corporation and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation and may execute and deliver in the name of the Corporation powers of attorney, contracts, bonds and other obligations and instruments.



SECTION 4. **President**. Subject to the direction of the Board of Directors and such supervisory powers as may be given by these Bylaws or the Board of Directors to the Chairman of the Board or the Chief Executive Officer, if such titles be held by other officers, the President shall have general supervision, direction and control of the business. Unless another officer has been appointed Chief Executive Officer of the Corporation or otherwise determined by the Board of Directors, the President shall be the Chief Executive Officer of the Corporation. The President shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws. The President shall have power to sign stock certificates, contracts and other instruments of the Corporation that are authorized and shall have general supervision and direction of all of the other officers, employees and agents of the Corporation, other than the Chairman of the Board and the Chief Executive Officer.

SECTION 5. **Vice-President**. A Vice-President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 6. **Treasurer**. The Treasurer shall in general have all duties incident to the position of Treasurer and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 7. **Chief Financial Officer**. The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform such duties and shall have such powers as may from time to time be assigned to the Chief Financial Officer by the Board of Directors, the Chief Executive Officer or the President. Unless otherwise designated by the Board of Directors, the Chief Financial Officer shall be the Treasurer of the Corporation.

SECTION 8. **Secretary**. The Secretary shall issue all authorized notices for, and shall maintain minutes of, all meetings of the stockholders and the Board of Directors and any committee thereof. The Secretary shall have charge of the corporate books. The Secretary shall in general have all the duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors or the Chief Executive Officer.

SECTION 9. **Salaries**. Officers of the Corporation shall be entitled to such salaries, compensation or reimbursement as shall be fixed or allowed from time to time by (or in the manner determined) the Board of Directors (or its committees).

**ARTICLE VI**  
**BOOKS AND RECORDS**

SECTION 1. **Location**. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept by or in the manner set forth in Section 224 of the DGCL.

**ARTICLE VII**  
**STOCK**

SECTION 1. **Stock; Signatures**. Shares of the Corporation's stock may be evidenced by certificates for shares of stock or may be issued in uncertificated form in accordance with applicable law as it presently exists or may hereafter be amended. The Board of Directors of the Corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution or the issuance of shares in uncertificated form shall not affect shares already represented by a certificate until such certificate is surrendered to the Corporation. Every holder of shares of stock in the Corporation that is represented by certificates shall be entitled to have a certificate certifying the number of shares owned by such holder in the Corporation and registered in certificated form. Stock certificates shall be signed by or in the name of the Corporation by any two authorized officers, including the Chairman, the Vice Chairman of the Board of Directors, the Chief Executive Officer, the President, any Vice-President, the Treasurer, the Secretary or an Assistant Secretary of the Corporation, representing the number of shares registered in certificate form. Any and all signatures on any such certificate may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he, she or it were such officer, transfer agent or registrar at the date of issue. The name of the holder of record of the shares represented by certificated or uncertificated shares, with the number of such shares and the date of issue, shall be entered on the books of the Corporation.

SECTION 2. **Transfers of Stock**. Transfers of record of shares of stock of the Corporation shall be made on the books administered by or on behalf of the Corporation after receipt of a request with proper evidence of succession, assignation or authority to transfer by the record holder of such stock, or by an attorney lawfully constituted in writing, and in the case of stock represented by a certificate, upon surrender of the certificate. Subject to the foregoing, the Board of Directors may make such rules and regulations as it shall deem necessary or appropriate concerning the issue, transfer and registration of shares of stock of the Corporation, and to appoint and remove transfer agents and registrars of transfers, subject to applicable law.

SECTION 3. **Fractional Shares**. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in accordance with Section 155 of the DGCL.

SECTION 4. **Lost, Stolen or Destroyed Certificates**(a) . The Corporation may issue a new certificate of stock or uncertificated shares in place of any certificate, theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Board of Directors may require the owner of any lost, stolen or destroyed certificate, or his or her legal representative, to give the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate or uncertificated shares.

#### **ARTICLE VIII**

##### **DIVIDENDS**

Subject to applicable law and the Certificate of Incorporation, the Board of Directors may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation. Subject to applicable law and the Certificate of Incorporation, the Board of Directors shall have full power to determine whether any dividends shall be declared and paid to stockholders.

#### **ARTICLE IX**

##### **CORPORATE SEAL**

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board of Directors. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

#### **ARTICLE X**

##### **FISCAL YEAR**

The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board of Directors.

#### **ARTICLE XI**

##### **WAIVER OF NOTICE**

Whenever notice is required to be given by these Bylaws or by the Certificate of Incorporation or by law, the person or persons entitled to said notice may consent in writing or by electronic transmission, whether before or after the time stated therein, to waive such notice requirement. Attendance of a person at any meeting shall constitute a waiver of notice of such meeting, except when the person attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

## ARTICLE XII

### BANK ACCOUNTS, DRAFTS, CONTRACTS, ETC.

SECTION 1. **Bank Accounts and Drafts.** In addition to such bank accounts as may be authorized by the Board of Directors, the primary financial officer or any person designated by said primary financial officer, whether or not an employee of the Corporation, may authorize such bank accounts to be opened or maintained in the name and on behalf of the Corporation as such primary financial officer (or designee thereof) may deem necessary or appropriate, payments from such bank accounts to be made upon and according to the check of the Corporation in accordance with the written instructions of said primary financial officer or other person so designated by the Treasurer.

SECTION 2. **Contracts.** The Board of Directors (or its designee) may authorize any person or persons, in the name and on behalf of the Corporation, to enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 3. **Proxies; Powers of Attorney; Other Instruments.** The Chairman, the Chief Executive Officer or any other person designated by either of them shall have the power and authority to execute and deliver proxies, powers of attorney and other instruments on behalf of the Corporation in connection with the rights and powers incident to the ownership of stock or other interests by the Corporation. The Chairman, the Chief Executive Officer or any other person authorized by proxy or power of attorney executed and delivered by either of them on behalf of the Corporation may attend and vote at any meeting of stockholders or equity holders of any entity in which the Corporation may hold stock or other interests, and may exercise on behalf of the Corporation any and all of the rights and powers incident to the ownership of such stock or interests at any such meeting, or otherwise as specified in the proxy or power of attorney so authorizing any such person. The Board of Directors, from time to time, may confer like powers upon any other person.

## ARTICLE XIII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

SECTION 1. **Right to Indemnification.** The Corporation shall indemnify, to the fullest extent permitted by the DGCL, as it presently exists or may be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any natural person (a) who is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer or trustee of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity or other enterprise at any time during which these Bylaws are in effect (a "**Covered Person**"), whether or not such Covered Person continues to serve in such capacity at the time any indemnification is sought or at the time of any proceeding (as defined below) relating thereto exists or is brought, and (b) who is or was a party to, is threatened to be made a party to, or is otherwise involved in (including as a witness) any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature (a "**proceeding**") based on such Covered Person's action(s) in his or her official capacity as a director or officer of the Corporation or as a director, officer or trustee of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity or other enterprise (to the extent serving in such position at the request of the Corporation), against all liability and loss suffered (including, without limitation, any judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement consented to in writing by the Corporation) and expenses (including attorneys' fees), actually and reasonably incurred by such Covered Person in connection with such proceeding. Such indemnification shall continue to a Covered Person who has ceased to be a director or officer, of the Corporation or as a director, officer or trustee of another corporation, limited liability company, partnership, joint venture, employee benefit plan, trust, nonprofit entity or other enterprise at the request of the Corporation and shall inure to the benefit of his or her heirs, executors and administrators. Except as provided in this Section 1, the Corporation shall be required to indemnify a Covered Person in connection with a proceeding (or part thereof) initiated by such Covered Person only if the proceeding (or part thereof) was authorized by the Board of Directors.

SECTION 2. **Notification of Claim.** To obtain indemnification under Section 1 of this Article XIII, a claimant shall submit to the Corporation a written request, including any such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon written request by a claimant for indemnification pursuant to the first sentence of this Section 2, a determination, if required by the DGCL, with respect to the claimant's entitlement to indemnification shall be made in accordance with Section 145(d) of the DGCL. In the event the determination of entitlement to indemnification is to be made by Independent Counsel, the Independent Counsel shall be selected by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within ninety (90) days after such determination.

SECTION 3. **Right of Covered Person to Bring Suit.** If a claim for indemnification under Section 1 of this Article XIII is not paid in full within ninety (90) days after a written claim pursuant to Section 2 of this Article XIII has been received by the Corporation, the claimant may at any time thereafter file suit to recover the unpaid amount of such claim and, to the extent successful, shall be entitled to be paid the reasonable costs, fees and expenses of prosecuting such claim to the fullest extent permitted by law. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking has been tendered to the Corporation) that the claimant has not met the standard of conduct that makes it permissible under the DGCL for the Corporation to indemnify the claimant for the amount claimed. Neither the failure of the Corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

SECTION 4. **Non-Exclusivity of Rights.** The right to indemnification conferred on any Covered Person by this Article XIII (a) shall not be exclusive of any other rights that such Covered Person may have or acquire under any statute, provision of these Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (b) cannot be terminated by the Corporation, the Board of Directors or the stockholders of the Corporation with respect to a Covered Person's service occurring prior to the date of such termination. Notwithstanding the foregoing, the Corporation's obligation to indemnify or advance expenses to any Covered Person who was or is serving at its request as a director, officer or trustee of another corporation, limited liability company, partnership, joint venture, trust, enterprise or nonprofit entity shall be excess and secondary to any obligations of such other entity, and shall in all cases be reduced by any amount such person has collected as indemnification from such other corporation, limited liability company, partnership, joint venture, trust, nonprofit entity or other enterprise, and, in the event the Corporation has fully paid such expenses, the Covered Person shall return to the Corporation any amounts subsequently received from such other source of indemnification.

SECTION 5. **Nature of Rights.** The rights conferred upon indemnitees in this Article XIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any repeal or modification of the provisions of this Article XIII that in any way diminishes any right of an indemnitee or his or her successors to indemnification or advancement (or related rights) shall be prospective only and shall not in any way diminish, limit, restrict, adversely affect or eliminate any such right with respect to any actual or alleged acts or omissions occurring prior to such repeal or modification.

SECTION 6. **Right to Advancement of Expenses.** The Corporation, in its sole discretion, may advance any costs, fees or expenses (including attorneys' fees) incurred by a Covered Person defending or participating in any proceeding prior to the final disposition of such proceeding; provided, however, to the extent required by law, the payment of such costs, fees or expenses incurred by a Covered Person shall be made only upon receipt of an undertaking by or on behalf of the Covered Person to repay all amounts advanced if it ultimately shall be determined by final judicial decision from which there is no further right of appeal that the Covered Person is not entitled to be indemnified by the Corporation for such expenses under this Article XIII or otherwise.

SECTION 7. **Savings Clause.** If any provision or provisions of this Article XIII shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article XIII (including, without limitation, each portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (b) to the fullest extent possible, the provisions of this Article XIII (including, without limitation, each such portion of any paragraph of this Article XIII containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 8. **Indemnification of Other Persons.** This Article XIII shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and advance expenses to persons other than Covered Persons when and as authorized by the Board of Directors. In addition, the Corporation may enter into agreements with any person or entity for the purpose of providing for indemnification or advancement, in any manner or extent consistent with Delaware law.

SECTION 9. **Indemnification Agreements; Insurance.** The Corporation shall have the discretionary power to enter into indemnification agreements with any Covered Person or agent of the Corporation that confer broader or other rights, including without limitation advancement of expenses, to the extent allowed by Delaware law. The Corporation may purchase and maintain insurance, at its expense, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability, expense or loss asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability, expense or loss under the provisions of these Bylaws of the Corporation or the DGCL. To the extent that the Corporation maintains any policy or policies providing such insurance, each such person shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such person.

SECTION 10. **Definitions.** For purposes of this Article XIII:

(1) "**Disinterested Director**" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(2) "**Independent Counsel**" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the Corporation or the claimant in an action to determine the claimant's rights under this Article XIII.

SECTION 11. **Notice.** Any notice, request or other communication required or permitted to be given to the Corporation under this Article XIII shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

#### **ARTICLE XIV**

#### **AMENDMENTS**

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal these Bylaws without the consent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation. From and after the occurrence of the Trigger Event (as defined in the Certificate of Incorporation), notwithstanding any other provisions of these Bylaws or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any additional or greater vote or consent required by the Certificate of Incorporation (including any vote of the holders of any particular class or classes or series of stock required by law or by the Certificate of Incorporation), the affirmative vote of the holders of at least 66 2/3% of the voting power of the outstanding shares of stock entitled to vote thereon, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend or repeal, in whole or in part, any provision of these Bylaws or to adopt any provision inconsistent herewith.

**ARTICLE XV**

**NOTICE BY ELECTRONIC TRANSMISSION**

SECTION 1. **Notice of Electronic Transmission.** Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission to the stockholder when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited.

A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.



**AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT**

THIS AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”), dated as of November 10, 2022, is made and entered into by and among, (i) Scilex Holding Company, a Delaware corporation formerly known as Vickers Vantage Corp. I (the “**Company**”), (ii) the equityholders designated as Sponsor Equityholders on Schedule A hereto (collectively, the “**Sponsor Equityholders**”); and (iii) Sorrento Therapeutics, Inc. (the “**Legacy Scilex Equityholder**” and, together with the Sponsor Equityholders and any person or entity who hereafter becomes a party to this Agreement pursuant to Section 6.2 of this Agreement, the “**Holder**” and each individually a “**Holder**”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to such terms in the Merger Agreement (as defined below).

**RECITALS**

WHEREAS, the Company and the Sponsor Equityholders are parties to that certain Registration Rights Agreement, dated as of January 6, 2021 (the “**Prior Agreement**”);

WHEREAS, the Company, Vantage Merger Sub Inc., a Delaware corporation (“**Merger Sub**”), and Scilex, Inc., an entity formerly known as Scilex Holding Company, a Delaware corporation (“**Legacy Scilex**”), are party to that certain Agreement and Plan of Merger, dated as of March 17, 2022 (as amended or restated from time to time, the “**Merger Agreement**”), pursuant to which, on the date hereof, Merger Sub merged (the “**Merger**”) with and into Legacy Scilex, with Legacy Scilex surviving the Merger as a wholly owned subsidiary of the Company;

WHEREAS, the Legacy Scilex Equityholder is receiving shares of Common Stock, par value \$0.0001 per share, of the Company (the “**Common Stock**”) on or about the date hereof, pursuant to the Merger Agreement (the “**Merger Shares**”);

WHEREAS, in connection with the consummation of the Merger, the parties to the Prior Agreement desire to amend and restate the Prior Agreement in its entirety as set forth herein, and the parties hereto desire to enter into this Agreement pursuant to which the Company shall grant the Holders certain registration rights with respect to the Registrable Securities (as defined below) on the terms and conditions set forth in this Agreement;

WHEREAS, pursuant to Section 6.7 of the Prior Agreement, no amendment, modification or termination of the Prior Agreement shall be binding upon any party unless executed in writing by such party; and

WHEREAS, all of the parties to the Prior Agreement desire to amend and restate the Prior Agreement in its entirety and enter into this Agreement, pursuant to which the Company shall grant the Holders certain registration rights with respect to certain securities of the Company, as set forth in this Agreement, effective as of the Closing.

**NOW, THEREFORE**, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 **Definitions.** The terms defined in this Article I shall, for all purposes of this Agreement, have the respective meanings set forth below:

“**Adverse Disclosure**” shall mean any public disclosure of material non-public information, which disclosure, in the good faith judgment of the Chief Executive Officer or Chief Financial Officer of the Company, after consultation with counsel to the Company, (i) would be required to be made in any Registration Statement or Prospectus in order for the applicable Registration Statement or Prospectus not to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein (in the case of any prospectus and any preliminary prospectus, in the light of the circumstances under which they were made) not misleading, (ii) would not be required to be made at such time if the Registration Statement were not being filed, declared effective or used, as the case may be, and (iii) the Company has a bona fide business purpose for not making such information public.

“**Block Trade**” shall mean an offering and/or sale of Registrable Securities by any Holder on a block trade or underwritten basis (whether firm commitment or otherwise) without substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

“**Board**” shall mean the Board of Directors of the Company.

“**Change in Control**” shall mean any transfer (whether by tender offer, merger, stock purchase, consolidation or other similar transaction), in one transaction or a series of related transactions, to a person or group of affiliated persons of the Company’s voting securities if, after such transfer, such person or group of affiliated persons would hold more than 50% of outstanding voting securities of the Company (or surviving entity) or would otherwise have the power to control the Board or to direct the operations of the Company.

“**Commission**” shall mean the Securities and Exchange Commission.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934, as it may be amended from time to time.

“**Founder Shares**” shall mean the 3,450,000 ordinary shares of the Company issued to its initial shareholders prior to the Company’s initial public offering.

“**Holders**” shall have the meaning given in the Preamble, for so long as such person or entity holds any Registrable Securities.

“**Misstatement**” shall mean an untrue statement of a material fact or an omission to state a material fact required to be stated in a Registration Statement or Prospectus, or necessary to make the statements in a Registration Statement or Prospectus (in the case of a Prospectus, in the light of the circumstances under which they were made) not misleading.

“**Permitted Transferees**” shall mean any person or entity to whom a Holder of Registrable Securities is permitted to transfer such Registrable Securities prior to the expiration of the Lock-up Period under this Agreement and any other applicable agreement between such Holder and the Company, and to any transferee thereafter.

“**Private Placement Warrants**” shall mean the 6,840,000 Private Placement Warrants issued by the Company that were privately purchased simultaneously with the consummation of the Company’s initial public offering.

“**Prospectus**” shall mean the prospectus included in any Registration Statement, as supplemented by any and all prospectus supplements and as amended by any and all post-effective amendments and including all material incorporated by reference in such prospectus.

“**Registrable Security**” shall mean (a) the Merger Shares (b) the Founder Shares and the shares of Common Stock issued or issuable upon the conversion of any Founder Shares, (c) the Private Placement Warrants and the Common Stock issued or issuable upon the exercise of the Private Placement Warrants, (d) the Working Capital Warrants and any shares of Common Stock issued or issuable upon the exercise of the Working Capital Warrants and (e) any outstanding share of the Common Stock or any other equity security (including the shares of Common Stock issued or issuable upon the exercise of any other equity security) of the Company held by a Holder as of the date of this Agreement, and (f) any other equity security of the Company issued or issuable with respect to any such share of the Common Stock by way of a stock dividend or stock split or in connection with a combination of shares, recapitalization, merger, consolidation, spin-off, reorganization or similar transaction; provided, however, that, as to any particular Registrable Security, such securities shall cease to be Registrable Securities upon the earliest occur of: (A) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been sold, transferred, disposed of or exchanged in accordance with such Registration Statement; (B) such securities shall have been otherwise transferred (other than to a Permitted Transferee), new certificates for such securities not bearing (or book entry positions not subject to) a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of such securities shall not require registration under the Securities Act; (C) such securities shall have ceased to be outstanding; (D) such securities may be sold without registration pursuant to Rule 144 promulgated under the Securities Act (or any successor rule promulgated thereafter by the Commission) (but with no volume or other restrictions or limitations); or (E) such securities have been sold to, or through, a broker, dealer or underwriter in a public distribution or other public securities transaction.

“**Registration**” shall mean a registration effected by preparing and filing a Registration Statement, Prospectus or similar document in compliance with the requirements of the Securities Act, and the applicable rules and regulations promulgated thereunder, and such registration statement becoming effective.

“**Registration Expenses**” shall mean the out-of-pocket expenses of a Registration, including, without limitation, the following:

- (A) all registration and filing fees (including fees with respect to filings required to be made with the Financial Industry Regulatory Authority, Inc.) and any securities exchange on which the Common Stock is then listed;
- (B) fees and expenses of compliance with securities or blue sky laws (including reasonable fees and disbursements of counsel for the Underwriters in connection with blue sky qualifications of Registrable Securities);
- (C) printing, messenger, telephone and delivery expenses;
- (D) reasonable fees and disbursements of counsel for the Company;
- (E) reasonable fees and disbursements of all independent registered public accountants of the Company incurred specifically in connection with such Registration; and
- (F) in an Underwritten Offering, reasonable fees and expenses of one (1) legal counsel selected by the majority-in-interest of the Demanding Holders (not to exceed \$50,000 without the prior written consent of the Company).

“**Registration Statement**” shall mean any registration statement filed by the Company with the Commission that covers the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus included in such registration statement, amendments (including post-effective amendments) and supplements to such registration statement, and all exhibits to and all material incorporated by reference in such registration statement.

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time.

“**Shelf**” shall mean the Form S-1 Shelf, the Form S-3 Shelf or any subsequent Shelf Registration.

“**Shelf Registration**” shall mean a registration of securities pursuant to a Registration Statement filed with the Commission in accordance with and pursuant to Rule 415 promulgated under the Securities Act (or any successor rule then in effect).

“**Sponsor**” shall mean Vickers Venture Fund VI Pte Ltd and Vickers Venture Fund VI (Plan) Pte Ltd.

“**Transfer**” shall mean the (a) the sale or assignment of, offer to sell, contract or agreement to sell, grant of any option to purchase or otherwise dispose of or agreement to dispose of, directly or indirectly, or establishment or increase of a put equivalent position or liquidation with respect to or decrease of a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any security, (b) entry into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any security, whether any such transaction is to be settled by delivery of such securities, in cash or otherwise, or (c) public announcement of any intention to effect any transaction specified in clause (a) or (b).

“**Underwriter**” shall mean a securities dealer who purchases any Registrable Securities as principal in an Underwritten Offering and not as part of such dealer’s market-making activities.

“**Underwritten Registration**” or “**Underwritten Offering**” shall mean a Registration in which securities of the Company are sold to an Underwriter in a firm commitment underwriting for distribution to the public.

“**Working Capital Warrants**” shall mean any warrants issued in payment for working capital loans from the Sponsor to the Company.

## ARTICLE II REGISTRATIONS

### 2.1 Shelf Registration.

2.1.1 Filing. The Company shall as soon as reasonably practicable, but in any event within forty-five (45) days after the Closing Date, use commercially reasonable efforts to file with the Commission a Registration Statement for a Shelf Registration on Form S-1 (the “**Form S-1 Shelf**”) covering, subject to Section 3.4, the public resale of all of the Registrable Securities (determined as of two (2) business days prior to such filing) on a delayed or continuous basis and shall use its commercially reasonable efforts to cause such Form S-1 Shelf to be declared effective as soon as practicable after the filing thereof, but in no event later than the earlier of (i) the 90th calendar day (or as soon as reasonably practicable if the Commission notifies the Company that it will “review” the Registration Statement) following the Closing Date and (ii) the 10th business day after the date the Company is notified (orally or in writing, whichever is earlier) by the Commission that the Registration Statement will not be “reviewed” or will not be subject to further review. Such Form S-1 Shelf shall provide for the resale of the Registrable Securities included therein pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. The Company shall maintain a Shelf in accordance with the terms hereof, and shall prepare and file with the Commission such amendments, including post-effective amendments, and supplements as may be necessary to keep a Shelf continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Following the filing of a Form S-1 Shelf, the Company shall use its commercially reasonable efforts to convert the Form S-1 Shelf (and any Subsequent Shelf Registration) to a Registration Statement on Form S-3 (the “**Form S-3 Shelf**”) as soon as reasonably practicable after the Company is eligible to use Form S-3. As soon as reasonably practicable following the effective date of a Registration Statement filed pursuant to this Section 2.1.1, the Company shall notify the Holders of the effectiveness of such Registration Statement. The Company’s obligation under this Section 2.1.1 shall, for the avoidance of doubt be subject to Section 3.4 hereto.

2.1.2 Subsequent Shelf Registration. If any Shelf ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall, subject to Section 3.4, use its commercially reasonable efforts to as promptly as is reasonably practicable cause such Shelf to again become effective under the Securities Act (including using its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness of such Shelf), and shall use its commercially reasonable efforts to as promptly as is reasonably practicable amend such Shelf in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf or file an additional registration statement as a Shelf Registration (a “**Subsequent Shelf Registration**”) registering the resale of all Registrable Securities (determined as of two (2) business days prior to such filing), and pursuant to any method or combination of methods legally available to, and requested by, any Holder named therein. If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to (i) cause such Subsequent Shelf Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration shall be an automatic shelf registration statement (as defined in Rule 405 promulgated under the Securities Act) if the Company is a well-known seasoned issuer (as defined in Rule 405 promulgated under the Securities Act) at the most recent applicable eligibility determination date) and (ii) keep such Subsequent Shelf Registration continuously effective, available for use to permit the Holders named therein to sell their Registrable Securities included therein and in compliance with the provisions of the Securities Act until such time as there are no longer any Registrable Securities. Any such Subsequent Shelf Registration shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration shall be on another appropriate form. The Company’s obligation under this Section 2.1.2 shall, for the avoidance of doubt be subject to Section 3.4 hereto.

2.1.3 Requests for Underwritten Shelf Takedowns. At any time and from time to time when an effective Shelf is on file with the Commission, the Legacy Scilex Equityholder or a majority-in-interest of the Sponsor Equityholders (any of the Legacy Scilex Equityholder or the Sponsor Equityholders being, in such case, a “**Demanding Holder**”) may request to sell all or any portion of their Registrable Securities in an Underwritten Offering that is registered pursuant to the Shelf (each, an “**Underwritten Shelf Takedown**”); provided that the Company shall only be obligated to effect an Underwritten Offering if such offering shall include Registrable Securities proposed to be sold by the Demanding Holder(s), either individually or together with other Demanding Holders, with a total offering price reasonably expected to exceed, in the aggregate, \$50 million (the “**Minimum Takedown Threshold**”). All requests for Underwritten Shelf Takedowns shall be made by giving written notice to the Company, which shall specify the approximate number of Registrable Securities proposed to be sold in the Underwritten Offering. Subject to Section 2.3.4, the Company shall have the right to select the Underwriters for such offering (which shall consist of one or more reputable nationally recognized investment banks), subject to the initial Demanding Holder’s prior approval (which shall not be unreasonably withheld, conditioned or delayed). The Legacy Scilex Equityholder, on the one hand, and the Sponsor Equityholders, on the other hand, may each demand not more than two (2) Underwritten Offerings pursuant to this Section 2.1.3 in any 12-month period. Notwithstanding anything to the contrary in this Agreement, the Company may effect any Underwritten Offering pursuant to any then effective Registration Statement, including a Form S-3, that is then available for such offering.

2.1.4 Reduction of Underwritten Offering. If the managing Underwriter or Underwriters in an Underwritten Shelf Takedown, in good faith, advises the Company, the Demanding Holders and Holders requesting piggyback rights pursuant to this Agreement with respect to such Underwritten Shelf Takedown (the “**Requesting Holders**”) (if any) in writing that the dollar amount or number of Registrable Securities that the Demanding Holders and the Requesting Holders (if any) desire to sell, taken together with all other shares of Common Stock or other equity securities that the Company desires to sell and all other shares of Common Stock or other equity securities, if any, as to which a Registration has been requested pursuant to separate written contractual piggyback registration rights held by any other stockholders who desire to sell, exceeds the maximum dollar amount or maximum number of equity securities that can be sold in the Underwritten Offering without adversely affecting the proposed offering price, the timing, the distribution method, or the probability of success of such offering (such maximum dollar amount or maximum number of such securities, as applicable, the “**Maximum Number of Securities**”), then the Company shall include in such Underwritten Offering, as follows: (i) first, the Registrable Securities of the Demanding Holders and the Requesting Holders (if any) (pro rata based on the respective number of Registrable Securities that each Demanding Holder and Requesting Holder (if any) has requested be included in such Underwritten Registration and the aggregate number of Registrable Securities that the Demanding Holders and Requesting Holders have requested be included in such Underwritten Registration (such proportion is referred to herein as “**Pro Rata**”)) that can be sold without exceeding the Maximum Number of Securities; (ii) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (i), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (iii) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (i) and (ii), the shares of Common Stock or other equity securities of other persons or entities that the Company is obligated to register in a Registration pursuant to separate written contractual arrangements with such persons and that can be sold without exceeding the Maximum Number of Securities.

2.1.5 Withdrawal. Prior to the pricing of an Underwritten Shelf Takedown, a majority-in-interest of the Demanding Holders initiating such Underwritten Offering shall have the right to withdraw from a Registration pursuant to such Underwritten Offering for any or no reason whatsoever upon written notification (a “**Withdrawal Notice**”) to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Underwritten Offering; provided that any Legacy Scilex Equityholder or Sponsor Equityholder may elect to have the Company continue an Underwritten Offering if the Minimum Takedown Threshold would still be satisfied by the Registrable Securities proposed to be sold in the Underwritten Offering by the Legacy Scilex Equityholder and the Sponsor Equityholders. If withdrawn, a demand for an Underwritten Offering shall constitute a demand for an Underwritten Offering by the withdrawing Demanding Holder for purposes of Section 2.1.3, unless either (i) such Demanding Holder has not previously withdrawn any Underwritten Offering or (ii) such Demanding Holder reimburses the Company for all Registration Expenses with respect to such Underwritten Offering (or, if there is more than one Demanding Holder, a *pro rata* portion of such Registration Expenses based on the respective number of Registrable Securities that each Demanding Holder has requested be included in such Underwritten Offering); provided that, if a Legacy Scilex Equityholder or a Sponsor Equityholder elects to continue an Underwritten Offering pursuant to the proviso in the immediately preceding sentence, such Underwritten Offering shall instead count as an Underwritten Offering demanded by the Legacy Scilex Equityholder or the Sponsor Equityholders, as applicable, for purposes of Section 2.1.3. Following the receipt of any Withdrawal Notice, the Company shall promptly forward such Withdrawal Notice to any other Holders that had elected to participate in such Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with an Underwritten Shelf Takedown prior to its withdrawal under this Section 2.1.5, other than if a Demanding Holder elects to pay such Registration Expenses pursuant to clause (ii) of the second sentence of this Section 2.1.5.

## 2.2 Piggyback Registration.

2.2.1 Piggyback Rights. If the Company proposes to file a Registration Statement under the Securities Act with respect to an offering of equity securities, or securities or other obligations exercisable or exchangeable for, or convertible into equity securities, for its own account or for the account of stockholders of the Company (or by the Company and by the stockholders of the Company including, without limitation, pursuant to Section 2.1 hereof), other than a Registration Statement (or any registered offering with respect thereto) (i) filed in connection with any employee stock option or other benefit plan, (ii) for an exchange offer or offering of securities solely to the Company's existing stockholders, (iii) for an offering of debt that is convertible into equity securities of the Company, (iv) pursuant to a Registration Statement on Form S-4 (or similar form that relates to a transaction subject to Rule 145 under the Securities Act or any successor rule thereto), (v) for a dividend reinvestment plan, or (vi) for a Block Trade, then the Company shall give written notice of such proposed filing to all of the Holders of Registrable Securities as soon as practicable but not less than ten (10) days before the anticipated filing date of such Registration Statement or, in the case of an Underwritten Offering pursuant to a Shelf Registration, the applicable "red herring" prospectus or prospectus supplement used for marketing such offering, which notice shall (A) describe the amount and type of securities to be included in such offering, the intended method(s) of distribution, and the name of the proposed managing Underwriter or Underwriters, if any, in such offering, and (B) offer to all of the Holders of Registrable Securities the opportunity to register the sale of such number of Registrable Securities as such Holders may request in writing within five (5) days after receipt of such written notice (such Registration a "**Piggyback Registration**"). Subject to Section 2.2.2, the Company shall, in good faith, cause such Registrable Securities to be included in such Piggyback Registration and, if applicable, shall use its commercially reasonable efforts to cause the managing Underwriter or Underwriters of a proposed Underwritten Offering to permit the Registrable Securities requested by the Holders pursuant to this Section 2.2.1 to be included in a Piggyback Registration on the same terms and conditions as any similar securities of the Company included in such registered offering and to permit the sale or other disposition of such Registrable Securities in accordance with the intended method(s) of distribution thereof. All such Holders proposing to distribute their Registrable Securities through an Underwritten Offering under this Section 2.2.1 shall enter into an underwriting agreement in customary form with the Underwriter(s) selected for such Underwritten Offering by the Company.

2.2.2 Reduction of Piggyback Registration. If the managing Underwriter or Underwriters in an Underwritten Registration that is to be a Piggyback Registration, in good faith, advises the Company and the Holders of Registrable Securities participating in the Piggyback Registration in writing that the dollar amount or number of shares of Common Stock or other equity securities that the Company desires to sell, taken together with (i) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been demanded pursuant to separate written contractual arrangements with persons or entities other than the Holders of Registrable Securities hereunder, (ii) the Registrable Securities as to which registration has been requested pursuant to Section 2.2 hereof, and (iii) the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggyback registration rights of stockholders of the Company other than the Holders of Registrable Securities, exceeds the Maximum Number of Securities, then:

(a) If the Registration or a registered offering is undertaken for the Company's account, the Company shall include in any such Registration or a registered offering (A) first, the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1 hereof, Pro Rata, based on the respective number of Registrable Securities that each Holder has so requested to be included in such Registration or such registered offering, which can be sold without exceeding the Maximum Number of Securities; and (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to written contractual piggyback registration rights of stockholders of the Company other than the Holders of Registrable Securities, which can be sold without exceeding the Maximum Number of Securities;

(b) If the Registration or a registered offering is pursuant to a request by persons or entities other than the Holders of Registrable Securities, then the Company shall include in any such Registration or a registered offering (A) first, the shares of Common Stock or other equity securities, if any, of such requesting persons or entities, other than the Holders of Registrable Securities, which can be sold without exceeding the Maximum Number of Securities; (B) second, to the extent that the Maximum Number of Securities has not been reached under the foregoing clause (A), the Registrable Securities of Holders exercising their rights to register their Registrable Securities pursuant to Section 2.2.1, Pro Rata, based on the respective number of Registrable Securities that each Holder has so requested to be included in such Registration or such registered offering, which can be sold without exceeding the Maximum Number of Securities; (C) third, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A) and (B), the shares of Common Stock or other equity securities that the Company desires to sell, which can be sold without exceeding the Maximum Number of Securities; and (D) fourth, to the extent that the Maximum Number of Securities has not been reached under the foregoing clauses (A), (B) and (C), the shares of Common Stock or other equity securities, if any, as to which Registration or a registered offering has been requested pursuant to separate written contractual piggyback registration rights of persons or entities other than the Holders of Registrable Securities hereunder, which can be sold without exceeding the Maximum Number of Securities; and

(c) If the Registration or registered offering is pursuant to a request by Holder(s) of Registrable Securities pursuant to Section 2.1 hereof, then the Company shall include in any such Registration or registered offering securities in the priority set forth in Section 2.1.4.

2.2.3 Piggyback Registration Withdrawal. Any Holder of Registrable Securities (other than a Demanding Holder, whose right to withdraw from an Underwritten Shelf Takedown, and related obligations, shall be governed by Section 2.1.5) shall have the right to withdraw from a Piggyback Registration for any or no reason whatsoever upon written notification to the Company and the Underwriter or Underwriters (if any) of his, her or its intention to withdraw from such Piggyback Registration prior to the effectiveness of the Registration Statement filed with the Commission with respect to such Piggyback Registration or, in the case of a Piggyback Registration pursuant to a Shelf Registration, the filing of the applicable “red herring” prospectus or prospectus supplement with respect to such Piggyback Registration used for marketing such transaction. The Company (whether on its own good faith determination or as the result of a request for withdrawal by persons or entities pursuant to separate written contractual obligations) may withdraw a Registration Statement filed with the Commission in connection with a Piggyback Registration at any time prior to the effectiveness of such Registration Statement or abandon the Underwritten Shelf Takedown in connection with a Piggyback Registration at any time prior to the launch of such Underwritten Shelf Takedown. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with the Piggyback Registration prior to its withdrawal under this Section 2.2.3.

2.2.4 Unlimited Piggyback Registration Rights. For purposes of clarity, any Piggyback Registration effected pursuant to Section 2.2 hereof shall not be counted as a Registration pursuant to a Underwritten Shelf Takedown effected under Section 2.1 hereof.

### 2.3 Block Trades.

2.3.1 Notwithstanding the foregoing, at any time and from time to time when an effective Shelf is on file with the Commission, if a Demanding Holder wishes to engage in a Block Trade, (x) with a total offering price reasonably expected to exceed \$75 million in the aggregate or (y) with respect to all remaining Registrable Securities held by the Demanding Holder, then such Demanding Holder only needs to notify the Company of the Block Trade at least five (5) business days prior to the day such offering is to commence and the Company shall as expeditiously as possible use its commercially reasonable efforts to facilitate such Block Trade; provided that the Demanding Holders representing a majority of the Registrable Securities wishing to engage in the Block Trade shall use commercially reasonable efforts to work with the Company and any Underwriters prior to making such request in order to facilitate preparation of the registration statement, prospectus and other offering documentation related to the Block Trade.

2.3.2 Prior to the filing of the applicable “red herring” prospectus or prospectus supplement used in connection with a Block Trade, a majority-in-interest of the Demanding Holders initiating such Block Trade shall have the right to submit a Withdrawal Notice to the Company and the Underwriter or Underwriters (if any) of their intention to withdraw from such Block Trade. Notwithstanding anything to the contrary in this Agreement, the Company shall be responsible for the Registration Expenses incurred in connection with a Block Trade prior to its withdrawal under this Section 2.3.2.

2.3.3 Notwithstanding anything to the contrary in this Agreement, Section 2.2 hereof shall not apply to a Block Trade initiated by a Demanding Holder pursuant to this Agreement.

2.3.4 The Demanding Holder in a Block Trade shall have the right to select the Underwriters for such Block Trade (which shall consist of one or more reputable nationally recognized investment banks).

2.3.5 The Legacy Scilex Equityholder, on the one hand, and the Sponsor Equityholders, on the other hand, may each demand no more than one (1) Block Trade pursuant to this Section 2.3 in any twelve (12) month period. For the avoidance of doubt, any Block Trade effected pursuant to this Section 2.3 shall not be counted as a demand for an Underwritten Shelf Takedown pursuant to Section 2.1.3 hereof.

2.4 Restrictions on Registration Rights. If (A) during the period starting with the date sixty (60) days prior to the Company’s good faith estimate of the date of the filing of, and ending on a date one hundred and twenty (120) days after the effective date of, a Company initiated Registration and provided that the Company continues to actively employ, in good faith, all commercially reasonable efforts to cause the applicable Registration Statement to become effective; (B) the Holders have requested an Underwritten Registration and the Company and the Holders are unable to obtain the commitment of underwriters to firmly underwrite the offer; or (C) in the good faith judgment of the Board such Registration would be seriously detrimental to the Company and the Board concludes as a result that it is essential to defer the filing of such Registration Statement at such time, then in each case the Company shall furnish to such Holders a certificate signed by the Chairman of the Board stating that in the good faith judgment of the Board it would be seriously detrimental to the Company for such Registration Statement to be filed in the near future and that it is therefore essential to defer the filing of such Registration Statement. In such event, the Company shall have the right to defer such filing for a period of not more than ninety (90) consecutive days; or more than one hundred and twenty (120) total calendar days, in each case, during any 12-month period.

### **ARTICLE III COMPANY PROCEDURES**

3.1 General Procedures. If the Company is required to effect the Registration of Registrable Securities pursuant to this Agreement, the Company shall use its commercially reasonable efforts to effect such Registration to permit the sale of such Registrable Securities in accordance with the intended plan of distribution thereof, and pursuant thereto the Company shall:

3.1.1 prepare and file with the Commission within the time frame required by Section 2.1.1 (to the extent applicable) a Registration Statement with respect to such Registrable Securities and use its commercially reasonable efforts to cause such Registration Statement to become effective and remain effective, until all Registrable Securities covered by such Registration Statement have been sold or have ceased to be Registrable Securities;

3.1.2 prepare and file with the Commission such amendments and post-effective amendments to the Registration Statement, and such supplements to the Prospectus, as may be reasonably requested by any Holder with Registrable Securities registered on such Registration Statement or any Underwriter of Registrable Securities or as may be required by the rules, regulations or instructions applicable to the registration form used by the Company or by the Securities Act or rules and regulations thereunder to keep the Registration Statement effective until all Registrable Securities covered by such Registration Statement are sold in accordance with the intended plan of distribution set forth in such Registration Statement or supplement to the Prospectus or have ceased to be Registrable Securities;



3.1.3 at least five days prior to filing a Registration Statement or Prospectus, or any amendment or supplement thereto (or such shorter period of time as may be (a) necessary in order to comply with the Securities Act, the Exchange Act and the rules and regulations promulgated thereunder or (b) advisable in order to reduce the number of days that sales are suspended pursuant to Section 3.4), furnish without charge to the Underwriters, if any, and each Holder of Registrable Securities included in such Registration, and each such Holder's legal counsel, copies of such Registration Statement as proposed to be filed, each amendment and supplement to such Registration Statement (in each case including all exhibits thereto and documents incorporated by reference therein), the Prospectus included in such Registration Statement (including each preliminary Prospectus), and such other documents as the Underwriters and each Holder of Registrable Securities included in such Registration or the legal counsel for any such Holders may reasonably request in order to facilitate the disposition of the Registrable Securities owned by such Holders; provided, that the Company shall have no obligation to furnish any documents publicly filed or furnished with the Commission pursuant to the Electronic Data Gathering Analysis and Retrieval System ("**EDGAR**") and provided further, the Company shall provide each Holder and their legal counsel with a reasonable opportunity to review such documents and comment thereon, and the Company shall consider in good faith any comments provided by such Holder or their legal counsel;

3.1.4 prior to any public offering of Registrable Securities, use its commercially reasonable efforts to (i) register or qualify the Registrable Securities covered by the Registration Statement under such securities or "blue sky" laws of such jurisdictions in the United States as any Holder of Registrable Securities included in such Registration Statement (in light of their intended plan of distribution) may request (or provide evidence reasonably satisfactory to such Holders that the Registrable Securities are exempt from such registration or qualification) and (ii) take such action necessary to cause such Registrable Securities covered by the Registration Statement to be registered with or approved by such other governmental authorities as may be necessary by virtue of the business and operations of the Company and do any and all other acts and things that may be necessary or advisable to enable the Holders of Registrable Securities included in such Registration Statement to consummate the disposition of such Registrable Securities in such jurisdictions; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify or take any action to which it would be subject to general service of process or taxation in any such jurisdiction where it is not then otherwise so subject;

3.1.5 use its commercially reasonable efforts to cause all Registrable Securities included in any Registration to be listed on such exchanges or otherwise designated for trading in the same manner as similar securities issued by the Company are then listed or designated;

3.1.6 provide a transfer agent or warrant agent, as applicable, and registrar for all such Registrable Securities no later than the effective date of such Registration Statement;

3.1.7 advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the Commission suspending the effectiveness of such Registration Statement or the initiation or threatening of any proceeding for such purpose and promptly use its commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

3.1.8 [reserved]

3.1.9 notify the Holders at any time when a Prospectus relating to such Registration Statement is required to be delivered under the Securities Act, of the happening of any event as a result of which the Prospectus included in such Registration Statement, as then in effect, includes a Misstatement, and then to correct such Misstatement as set forth in Section 3.4 hereof;

3.1.10 in the event of an Underwritten Offering, a Block Trade, or sale by a broker, placement agent or sales agent pursuant to such Registration, in each of the cases to the extent customary for a transaction of its type, permit a representative of the Holders (such representative to be selected by a majority of the participating Holders), the Underwriters or other financial institutions facilitating such Underwritten Offering, Block Trade or other sale pursuant to such Registration, if any, and any attorney, consultant or accountant retained by such Holders or Underwriters to participate, at each such person's or entity's own expense, in the preparation of the Registration Statement, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such representative, Underwriter, financial institution, attorney, consultant or accountant in connection with the Registration; provided, however, that such representatives, Underwriters or financial institutions enter into a confidentiality agreement, in form and substance reasonably satisfactory to the Company, prior to the release or disclosure of any such information;

3.1.11 obtain a "comfort" letter from the Company's independent registered public accountants in the event of an Underwritten Offering, a Block Trade or sale by a broker, placement agent or sales agent pursuant to such Registration in customary form and covering such matters of the type customarily covered by "comfort" letters for a transaction of its type as the managing Underwriter may reasonably request, and reasonably satisfactory to a majority-in-interest of the participating Holders;

3.1.12 in the event of an Underwritten Offering, a Block Trade or sale by a broker, placement agent or sales agent pursuant to such Registration, on the date the Registrable Securities are delivered for sale pursuant to such Registration, to the extent customary for a transaction of its type, obtain an opinion, dated such date, of counsel representing the Company for the purposes of such Registration, addressed to the participating Holders, the broker, placement agents or sales agent, if any, and the Underwriters, if any, covering such legal matters with respect to the Registration in respect of which such opinion is being given as the participating Holders, broker, placement agents, sales agent, or Underwriter may reasonably request and as are customarily included in such opinions and negative assurance letters;

3.1.13 in the event of any Underwritten Offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing Underwriter of such offering;

3.1.14 make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months beginning with the first day of the Company's first full calendar quarter after the effective date of the Registration Statement which satisfies the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any successor rule then in effect), and which requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

3.1.15 if the Registration involves the Registration of Registrable Securities involving gross proceeds in excess of \$50,000,000, use its commercially reasonable efforts to make available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Underwriter in such Underwritten Offering; and

3.1.16 otherwise, in good faith, cooperate reasonably with, and take such customary actions as may reasonably be requested by the participating Holders, consistent with the terms of this Agreement, in connection with such Registration.

Notwithstanding the foregoing, the Company shall not be required to provide any documents or information to an Underwriter, broker, sales agent or placement agent if such Underwriter, broker, sales agent or placement agent has not then been named with respect to the applicable Underwritten Offering or other offering involving a registration as an Underwriter, broker, sales agent or placement agent, as applicable.

3.2 Registration Expenses. Except as otherwise provided herein, the Registration Expenses of all Registrations shall be borne by the Company. It is acknowledged by the Holders that each Holder shall bear, with respect to such Holder's Registrable Securities being sold, all incremental selling expenses relating to the sale of Registrable Securities, such as Underwriters' commissions and discounts, brokerage fees, Underwriter marketing costs and, other than as set forth in the definition of "Registration Expenses," all reasonable fees and expenses of any legal counsel representing the Holders.

3.3 Requirements for Participation in Underwritten Offerings. Notwithstanding anything in this Agreement to the contrary, if any Holder does not provide the Company with its requested Holder Information (as defined in Section 5.1.2), the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines, based on the advice of counsel, that it is necessary or advisable to include such information in the applicable Registration Statement or Prospectus and such Holder continues thereafter to withhold such information. In addition, no person or entity may participate in any Underwritten Offering or other offering for equity securities of the Company pursuant to a Registration initiated by the Company hereunder unless such person or entity (i) agrees to sell such person's or entity's securities on the basis provided in any underwriting arrangements approved by the Company and (ii) completes and executes all customary questionnaires, powers of attorney, indemnities, lock-up agreements, underwriting agreements and other customary documents as may be reasonably required under the terms of such underwriting arrangements. For the avoidance of doubt, the exclusion of a Holder's Registrable Securities as a result of this Section 3.3 shall not affect the registration of the other Registrable Securities to be included in such Registration.

3.4 Suspension of Sales; Adverse Disclosure.

3.4.1 Upon receipt of written notice from the Company that a Registration Statement or Prospectus contains a Misstatement, each of the Holders shall forthwith discontinue disposition of Registrable Securities until it has received copies of a supplemented or amended Prospectus correcting the Misstatement (it being understood that the Company hereby covenants to prepare and file such supplement or amendment as soon as reasonably practicable after the time of such notice), or until it is advised in writing by the Company that the use of the Prospectus may be resumed.

3.4.2 If the filing, initial effectiveness or continued use of a Registration Statement in respect of any Registration at any time would (a) require the Company to make an Adverse Disclosure, (b) require the inclusion in such Registration Statement of financial statements that are unavailable to the Company for reasons beyond the Company's control, or (c) in the good faith judgment of the majority of the Board such Registration, be seriously detrimental to the Company and the majority of the Board concludes as a result that it is essential to defer such filing, initial effectiveness or continued use at such time, the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such Registration Statement for the shortest period of time, but in no event more than ninety (90) consecutive days; or more than one hundred and twenty (120) total calendar days, in each case, during any 12-month period, determined in good faith by the Company to be necessary for such purpose. In the event the Company exercises its rights under the preceding sentence, the Holders agree to suspend, immediately upon their receipt of the notice referred to above, their use of the Prospectus relating to any Registration in connection with any sale or offer to sell Registrable Securities until such Holder receives written notice from the Company that such sales or offers of Registrable Securities may be resumed, and in each case maintain the confidentiality of such notice and its contents. The Company shall as promptly as reasonably practicable notify the Holders of the expiration of any period during which it exercised its rights under this Section 3.4.

3.5 Reporting Obligations. As long as any Holder shall own Registrable Securities, the Company, at all times while it shall be a reporting company under the Exchange Act, covenants to file timely (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Company after the date hereof pursuant to Sections 13(a) or 15(d) of the Exchange Act and to promptly furnish the Holders with true and complete copies of all such filings; provided that any documents publicly filed or furnished with the Commission pursuant to EDGAR shall be deemed to have been furnished or delivered to the Holders pursuant to this Section 3.5. The Company further covenants that it shall take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell shares of Common Stock held by such Holder without registration under the Securities Act within the limitation of the exemptions provided by Section 4(a)(1) of the Securities Act or Rule 144 promulgated under the Securities Act (or any successor rule then in effect), including providing any legal opinions. Upon the request of any Holder, the Company shall deliver to such Holder a written certification of a duly authorized officer as to whether it has complied with such requirements.

**ARTICLE IV**  
**LOCK-UP**

4.1 Lock-up.

4.1.1 Except as permitted by Section 4.2, the Legacy Scilex Equityholder and each Sponsor Equityholder (each, a “**Lock-up Party**”) shall not Transfer any shares of Common Stock or any security convertible into or exercisable or exchanged for Common Stock beneficially owned or owned of record by such Holder (the “**Lock-up**”) until the date that is the earlier of (i) one hundred eighty (180) days from the date hereof or (ii) the date on which the Company completes a liquidation, merger, stock exchange, reorganization or other similar transaction that results in all of the Company’s stockholders having the right to exchange their shares of Common Stock for cash, securities or other property (the “**Lock-up Period**”).

4.2 Exceptions. The provisions of Section 4.1 shall not apply to:

4.2.1 transactions relating to shares of Common Stock or warrants acquired in open market transactions;

4.2.2 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as a bona fide gift or charitable contribution;

4.2.3 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to a trust, family limited partnership or other entity formed for estate planning purposes for the primary benefit of the spouse, domestic partner, parent, sibling, child or grandchild of a Holder or any other person with whom a Holder has a relationship by blood, marriage or adoption not more remote than first cousin and Transfers to any such family member;

4.2.4 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock by will or intestate succession or the laws of descent and distributions upon the death of a Holder (it being understood and agreed that the appointment of one or more executors, administrators or personal representatives of the estate of a Holder shall not be deemed a Transfer hereunder to the extent that such executors, administrators and/or personal representatives comply with the terms of this Article IV on behalf of such estate);

4.2.5 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock pursuant to a qualified domestic order or in connection with a divorce settlement;

4.2.6 if a Holder is a corporation, partnership (whether general, limited or otherwise), limited liability company, trust or other business entity, (i) Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to another corporation, partnership, limited liability company, trust or other business entity that controls, is controlled by or is under common control or management with a Holder (including, for the avoidance of doubt, where such Holder is a partnership, to its general partner or a successor partnership or fund, or any other funds managed by such partnership), or (ii) Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as part of a dividend, distribution, transfer or other disposition of shares of Common Stock to partners, limited liability company members, direct or indirect stockholders or other equity holders of a Holder, including, for the avoidance of doubt, where such Holder is a partnership, to its general partner or a successor partnership, fund or investment vehicle, or any other partnerships, funds or investment vehicles controlled or managed by such partnership;

4.2.7 if the Holder is a trust, Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to a trustor or beneficiary of such trust or to the estate of a beneficiary of such trust;

4.2.8 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to the Company's or the Holder's officers, directors, members, consultants or their affiliates;

4.2.9 pledges of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock as security or collateral in connection with any borrowing or the incurrence of any indebtedness by any Holder (provided such borrowing or incurrence of indebtedness is secured by a portfolio of assets or equity interests issued by multiple issuers);

4.2.10 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock pursuant to a *bona fide* third-party tender offer, merger, asset acquisition, stock sale, recapitalization, consolidation, business combination or other transaction or series of related transactions involving a Change in Control of the Company, provided that in the event that such tender offer, merger, asset acquisition, stock sale, recapitalization, consolidation, business combination or other such transaction is not completed, the securities subject to this Agreement shall remain subject to this Agreement;

4.2.11 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to the Company in connection with the liquidation or dissolution of the Company by virtue of the laws of the state of the Company's organization and the Company's organizational documents;

4.2.12 the establishment of a trading plan pursuant to Rule 10b5-1 promulgated under the Exchange Act, provided that such plan does not provide for the Transfer of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock during the Lock-Up Period; and

4.2.13 Transfers of shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock to satisfy any U.S. federal, state, or local income tax obligations of the Lock-up Party (or its direct or indirect owners) arising from a change in the U.S. Internal Revenue Code of 1986, as amended (the "*Code*"), or the U.S. Treasury Regulations promulgated thereunder (the "*Regulations*") after the date on which the Merger Agreement was executed by the parties, and such change prevents the Merger from qualifying as a "reorganization" pursuant to Section 368 of the Code (and the Merger does not qualify for similar tax-free treatment pursuant to any successor or other provision of the Code or Regulations taking into account such changes), in each case solely and to the extent necessary to cover any tax liability as a direct result of the transaction;

***PROVIDED, THAT IN THE CASE OF ANY TRANSFER OR DISTRIBUTION PURSUANT TO SECTIONS 4.2.2 THROUGH 4.2.8 AND 4.2.13, EACH DONEE, DISTRIBUTEES OR OTHER TRANSFEREE SHALL AGREE IN WRITING, IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY, TO BE BOUND BY THE PROVISIONS OF THIS AGREEMENT.***

4.3 Null and Void. If any Transfer of shares of Common Stock prior to the end of the Lock-up Period is made or attempted contrary to the provisions of this Agreement, such purported Transfer shall be null and void *ab initio*, and the Company shall refuse to recognize any such purported transferee of the Common Stock as one of its equityholders for any purpose.

4.4 Legend. During the Lock-up Period, each certificate evidencing any Common Stock shall be stamped or otherwise imprinted with a legend in substantially the following form, in addition to any other applicable legends:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN AN AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT, DATED AS OF NOVEMBER 10, 2022 (AS MAY BE AMENDED OR RESTATED FROM TIME TO TIME), A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY. NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH AGREEMENT."

Promptly upon the expiration of the Lock-up Period, the Company shall use commercially reasonable efforts to cause the removal of such legend and, if determined appropriate by the Company, any restrictive legend related to compliance with the federal securities laws from the certificates evidencing the Common Stock.

## ARTICLE V INDEMNIFICATION AND CONTRIBUTION

### 5.1 Indemnification.

5.1.1 The Company agrees to indemnify, to the extent permitted by law, each Holder of Registrable Securities, its officers, directors and agents and each person or entity who controls such Holder (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and out-of-pocket expenses (including without limitation actual, reasonable and documented attorneys' fees) caused by any untrue or alleged untrue statement of material fact contained or incorporated by reference in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as the same are caused by or contained in any information or affidavit so furnished in writing to the Company by such Holder expressly for use therein. The Company shall indemnify the Underwriters, their officers and directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to the indemnification of the Holder.

5.1.2 In connection with any Registration Statement in which a Holder of Registrable Securities is participating, such Holder shall furnish (or cause to be furnished) to the Company in writing such information and affidavits as the Company reasonably requests for use in connection with any such Registration Statement or Prospectus (the "**Holder Information**") and, to the extent permitted by law, shall indemnify the Company, its directors, officers and agents and each person or entity who controls the Company (within the meaning of the Securities Act) against any losses, claims, damages, liabilities and out-of-pocket expenses (including without limitation actual, reasonable and documented attorneys' fees) resulting from any untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus or preliminary Prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement is contained in (or not contained in, in the case of an omission) the Holder Information; provided, however, that the obligation to indemnify shall be several, not joint and several, among such Holders of Registrable Securities, and the liability of each such Holder of Registrable Securities shall be in proportion to and limited to the net proceeds received by such Holder from the sale of Registrable Securities pursuant to such Registration Statement. The Holders of Registrable Securities shall indemnify the Underwriters, their officers, directors and each person or entity who controls such Underwriters (within the meaning of the Securities Act) to the same extent as provided in the foregoing with respect to indemnification of the Company.

5.1.3 Any person or entity entitled to indemnification herein shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that the failure to give prompt notice shall not impair any person's or entity's right to indemnification hereunder to the extent such failure has not materially prejudiced the indemnifying party) and (ii) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent shall not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one (1) counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim. No indemnifying party shall, without the consent of the indemnified party, consent to the entry of any judgment or enter into any settlement which cannot be settled in all respects by the payment of money (and such money is so paid by the indemnifying party pursuant to the terms of such settlement) or which settlement includes a statement or admission of fault and culpability on the part of such indemnified party or which settlement does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect to such claim or litigation.

5.1.4 The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling person or entity of such indemnified party and shall survive the transfer of securities. The Company and each Holder of Registrable Securities participating in an offering also agrees to make such provisions as are reasonably requested by any indemnified party for contribution to such party in the event the Company's or such Holder's indemnification is unavailable for any reason.

5.1.5 If the indemnification provided under Section 5.1 hereof from the indemnifying party is unavailable or insufficient to hold harmless an indemnified party in respect of any losses, claims, damages, liabilities and out-of-pocket expenses referred to herein, then the indemnifying party, in lieu of indemnifying the indemnified party, shall contribute to the amount paid or payable by the indemnified party as a result of such losses, claims, damages, liabilities and out-of-pocket expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party, as well as any other relevant equitable considerations. The relative fault of the indemnifying party and indemnified party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, was made by (or not made by, in the case of an omission), or relates to information supplied by (or not supplied by, in the case of an omission), such indemnifying party or indemnified party, and the indemnifying party's and indemnified party's relative intent, knowledge, access to information and opportunity to correct or prevent such action and the benefits received by such indemnified party or indemnifying party; provided, however, that the liability of any Holder under this Section 5.1.5 shall be limited to the amount of the net proceeds received by such Holder in such offering giving rise to such liability. The amount paid or payable by a party as a result of the losses or other liabilities referred to above shall be deemed to include, subject to the limitations set forth in Sections 5.1.1, 5.1.2 and 5.1.3 above, any legal or other fees, charges or out-of-pocket expenses reasonably incurred by such party in connection with any investigation or proceeding. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.1.5 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 5.1.5. No person or entity guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution pursuant to this Section 5.1.5 from any person or entity who was not guilty of such fraudulent misrepresentation.

## ARTICLE VI MISCELLANEOUS

6.1 Notices. Any notice hereunder shall be sent in writing, addressed as specified below, and shall be deemed given: (a) if by hand or recognized courier service, by 4:00PM on a business day, addressee's day and time, on the date of delivery, and otherwise on the first business day after such delivery; (b) if by fax or email, on the date that transmission is confirmed electronically, if by 4:00PM on a business day, addressee's day and time, and otherwise on the first business day after the date of such confirmation; or (c) five days after mailing by certified or registered mail, return receipt requested. Notices shall be addressed to the respective parties as follows, or to such other address as a party shall specify to the others in accordance with this Section 6.1: if to the Company, to: Scilex Holding Company, 960 San Antonio Road, Palo Alto, CA 94303, Attn: Jaisim Shah, email: jshah@scilexpharma.com, with a copy to Paul Hastings LLP, 1117 S. California Avenue, Palo Alto, CA 94304, Attn: Jeff Hartlin, Esq.; and, if to any Holder, at such Holder's address or contact information as set forth in the Company's books and records.

### 6.2 Assignment; No Third Party Beneficiaries.

6.2.1 This Agreement and the rights, duties and obligations of the Company hereunder may not be assigned or delegated by the Company in whole or in part.

6.2.2 Subject to Section 6.2.4 and Section 6.2.5, this Agreement and the rights, duties and obligations of a Holder hereunder may be assigned in whole or in part to such Holder's Permitted Transferees; provided that with respect to the Legacy Scilex Equityholder and the Sponsor Equityholders, the rights hereunder that are personal to such Holders may not be assigned or delegated in whole or in part, except that (x) the Legacy Scilex Equityholder shall be permitted to transfer its rights hereunder as a Legacy Scilex Equityholder to one or more affiliates or any direct or indirect partners, members or equity holders of the Legacy Scilex Equityholder (it being understood that no such transfer shall reduce any rights of the Legacy Scilex Equityholder or such transferees), and (y) the Sponsor Equityholders shall be permitted to transfer their rights hereunder as the Sponsor Equityholders to one or more of their respective affiliates or any direct or indirect partners, members or equity holders of the Sponsor Equityholders (it being understood that no such transfer shall reduce any rights of the Sponsor Equityholders or such transferees).

6.2.3 This Agreement and the provisions hereof shall be binding upon and shall inure to the benefit of each of the parties and its successors and the permitted assigns of the Holders, which shall include Permitted Transferees.

6.2.4 This Agreement shall not confer any rights or benefits on any persons or entities that are not parties hereto, other than as expressly set forth in this Agreement and Section 6.2 hereof.

6.2.5 No assignment by any party hereto of such party's rights, duties and obligations hereunder shall be binding upon or obligate the Company unless and until the Company shall have received (i) written notice of such assignment as provided in Section 6.1 hereof and (ii) the written agreement of the assignee, in a form reasonably satisfactory to the Company, to be bound by the terms and provisions of this Agreement (which may be accomplished by an addendum or certificate of joinder to this Agreement). Any transfer or assignment made other than as provided in this Section 6.2 shall be null and void.

6.3 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one agreement. This Agreement shall become effective upon delivery to each party of an executed counterpart or the earlier delivery to each party of original, photocopied, or electronically transmitted signature pages that together (but need not individually) bear the signatures of all other parties.

6.4 Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Delaware, without giving effect to the conflict of laws principles thereof. Any Action based upon, arising out of or related to this Agreement or the transactions contemplated hereby must be brought in the Court of Chancery of the State of Delaware (or, to the extent such court does not have subject matter jurisdiction, the Superior Court of the State of Delaware), or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the parties irrevocably (i) submits to the exclusive jurisdiction of each such court in any such proceeding or Action, (ii) waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, (iii) agrees that all claims in respect of the proceeding or Action shall be heard and determined only in any such court, and (iv) agrees not to bring any proceeding or Action arising out of or relating to this Agreement or the transactions contemplated hereby in any other court. Nothing herein contained shall be deemed to affect the right of any party to serve process in any manner permitted by Law or to commence Proceedings or otherwise proceed against any other party in any other jurisdiction, in each case, to enforce judgments obtained in any Action brought pursuant to this Section 6.4.

6.5 Waiver of Jury Trial. THE PARTIES TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE ANY RIGHT EACH SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION OF ANY KIND OR NATURE, IN ANY COURT IN WHICH AN ACTION MAY BE COMMENCED, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ADDITIONAL AGREEMENT, OR BY REASON OF ANY OTHER CAUSE OR DISPUTE WHATSOEVER BETWEEN OR AMONG ANY OF THE PARTIES TO THIS AGREEMENT OF ANY KIND OR NATURE. NO PARTY SHALL BE AWARDED PUNITIVE OR OTHER EXEMPLARY DAMAGES RESPECTING ANY DISPUTE ARISING UNDER THIS AGREEMENT OR ANY ADDITIONAL AGREEMENT.

6.6 Amendments and Modifications. Upon the written consent of the Company and the Holders of at least a majority in interest of the Registrable Securities at the time in question, compliance with any of the provisions, covenants and conditions set forth in this Agreement may be waived, or any of such provisions, covenants or conditions may be amended or modified; provided, however, that notwithstanding the foregoing, any amendment hereto or waiver hereof that adversely affects one Holder, solely in its capacity as a holder of the shares of capital stock of the Company, in a manner that is materially different from the other Holders (in such capacity) shall require the consent of the Holder so affected. No course of dealing between any Holder or the Company and any other party hereto or any failure or delay on the part of a Holder or the Company in exercising any rights or remedies under this Agreement shall operate as a waiver of any rights or remedies of any Holder or the Company. No single or partial exercise of any rights or remedies under this Agreement by a party shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder or thereunder by such party.



6.7 Other Registration Rights. Other than as provided in the warrant agreement dated as of January 6, 2021 between the Company and Continental Stock Transfer & Trust Company, the Company represents and warrants that no person or entity, other than a Holder of Registrable Securities, has any right to require the Company to register any securities of the Company for sale or to include such securities of the Company in any Registration filed by the Company for the sale of securities for its own account or for the account of any other person or entity. Further, the Company represents and warrants that this Agreement supersedes any other registration rights agreement or agreement with similar terms and conditions and in the event of a conflict between any such agreement or agreements and this Agreement, the terms of this Agreement shall prevail. This Agreement supersedes, and amends and restates in its entirety, the Prior Agreement.

6.8 Term. This Agreement shall terminate upon the earlier of (i) the tenth (10th) anniversary of the date of this Agreement, (ii) the date as of which all of the Registrable Securities have been sold or disposed of or (iii) with respect to any particular Holder, on the date such Holder no longer holds Registrable Securities. The provisions of Section 3.5 and Article IV shall survive any termination.

6.9 Holder Information. Each Holder agrees, if requested in writing, to represent to the Company the total number of Registrable Securities held by such Holder in order for the Company to make determinations hereunder.

6.10 Severability. A determination by a court or other legal authority that any provision that is not of the essence of this Agreement is legally invalid shall not affect the validity or enforceability of any other provision hereof. The parties shall cooperate in good faith to substitute (or cause such court or other legal authority to substitute) for any provision so held to be invalid a valid provision, as alike in substance to such invalid provision as is lawful.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have caused this Amended and Restated Registration Rights Agreement to be executed and delivered by their duly authorized representatives as of the date first written above.

COMPANY:

SCILEX HOLDING COMPANY

By: /s/ Jaisim Shah

Name: Jaisim Shah

Title: Chief Executive Officer

SPONSOR EQUITYHOLDERS:

VICKERS VENTURE FUND VI (PLAN) PTE LTD

By: /s/ Finian Tan

Name: Dr. Finian Tan

Title: Managing Member

VICKERS VENTURE FUND VI PTE LTD

By: /s/ Finian Tan

Name: Dr. Finian Tan

Title: Managing Member

/s/ Pei Wei Woo

Pei Wei Woo

/s/ Suneel Kaji

Suneel Kaji

/s/ Steve Myint

Steve Myint

LEGACY SCILEX EQUITYHOLDER:

SORRENTO THERAPEUTICS, INC.

By: /s/ Henry Ji, Ph.D.

Name: Henry Ji, Ph.D.

Title: President, Chief Executive Officer and Chairman of the Board

*[Signature Page to Registration Rights Agreement]*

SCHEDULE A – SPONSOR EQUITYHOLDERS

Name and Address of Equityholder

Vickers Venture Fund VI (Plan) Pte Ltd.  
c/o Vickers Vantage Corp. I  
1 Harbourfront Avenue, #16-06  
Keppel Bay Tower  
Singapore 098632, Singapore

Vickers Venture Fund VI Pte Ltd.  
c/o Vickers Vantage Corp. I  
1 Harbourfront Avenue, #16-06  
Keppel Bay Tower  
Singapore 098632, Singapore

Pei Wei Woo  
c/o Vickers Vantage Corp. I  
1 Harbourfront Avenue, #16-06  
Keppel Bay Tower  
Singapore 098632, Singapore

Suneel Kaji  
c/o Vickers Vantage Corp. I  
1 Harbourfront Avenue, #16-06  
Keppel Bay Tower  
Singapore 098632, Singapore

Steve Myint  
c/o Vickers Vantage Corp. I  
1 Harbourfront Avenue, #16-06  
Keppel Bay Tower  
Singapore 098632, Singapore

SCHEDULE B – LEGACY SCILEX EQUITYHOLDER

Name and Address of Equityholder

Sorrento Therapeutics, Inc.  
4955 Directors Place  
San Diego, CA 92121

## INDEMNIFICATION AGREEMENT

**THIS INDEMNIFICATION AGREEMENT** (the "Agreement") is made and entered into as of \_\_\_\_\_ between Scilex Holding Company, a Delaware corporation (the "Company"), and \_\_\_\_\_ ("Indemnitee").

**WITNESSETH THAT:**

**WHEREAS**, highly competent persons have become more reluctant to serve corporations as directors, officers or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation;

**WHEREAS**, the Board of Directors of the Company (the "Board") has determined that, in order to attract and retain qualified individuals, the Company will attempt to maintain on an ongoing basis, at its sole expense, liability insurance to protect persons serving the Company and its subsidiaries from certain liabilities. Although the furnishing of such insurance has been a customary and widespread practice among United States-based corporations and other business enterprises, the Company believes that, given current market conditions and trends, such insurance may be available to it in the future only at higher premiums and with more exclusions. At the same time, directors, officers and other persons in service to corporations or business enterprises are being increasingly subjected to expensive and time-consuming litigation relating to, among other things, matters that traditionally would have been brought only against the Company or business enterprise itself. The Bylaws and Certificate of Incorporation of the Company require indemnification of the officers and directors of the Company. Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware ("DGCL"). The Bylaws and Certificate of Incorporation and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the Board, officers and other persons with respect to indemnification;

**WHEREAS**, the uncertainties relating to such insurance and to indemnification have increased the difficulty of attracting and retaining such persons;

**WHEREAS**, the Board has determined that the increased difficulty in attracting and retaining such persons is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

**WHEREAS**, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

**WHEREAS**, this Agreement is a supplement to and in furtherance of the Bylaws and Certificate of Incorporation of the Company and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder; and

**WHEREAS**, Indemnitee does not regard the protection available under the Company's Bylaws and Certificate of Incorporation and insurance as adequate in the present circumstances, and may not be willing to serve as an officer or director without adequate protection, and the Company desires Indemnitee to serve in such capacity. Indemnitee is willing to serve, continue to serve and to take on additional service for or on behalf of the Company on the condition that he or she be so indemnified.

**NOW, THEREFORE**, in consideration of Indemnitee's agreement to serve as an officer or director from and after the date hereof, the parties hereto agree as follows:

1. Indemnity of Indemnitee. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent permitted by law, as such may be amended from time to time. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) Proceedings Other Than Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his or her Corporate Status (as hereinafter defined), the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him, or on his or her behalf, in connection with such Proceeding or any claim, issue or matter therein, if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful.

(b) Proceedings by or in the Right of the Company. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his or her Corporate Status, the Indemnitee is, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by the Indemnitee, or on the Indemnitee's behalf, in connection with such Proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in or not opposed to the best interests of the Company; provided, however, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware shall determine that such indemnification may be made.

(c) Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a party to and is successful, on the merits or otherwise, in any Proceeding, he or she shall be indemnified to the maximum extent permitted by law, as such may be amended from time to time, against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section 1 and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. Additional Indemnity. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1 of this Agreement, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or her or on his or her behalf if, by reason of his or her Corporate Status, he or she is, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful.

3. Contribution.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and the Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. The Company shall not enter into any settlement of any action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which the Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), the Company shall contribute to the amount of Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such action, suit or proceeding arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other equitable considerations that applicable law may require to be considered. The relative fault of the Company and all officers, directors or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(c) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution that may be brought by officers, directors, or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(d) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his or her Corporate Status, a witness, or is made (or asked) to respond to discovery requests, in any Proceeding to which Indemnitee is not a party, he or she shall be indemnified against all Expenses actually and reasonably incurred by him or her or on his or her behalf in connection therewith.

5. Advancement of Expenses. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding by reason of Indemnitee's Corporate Status within thirty (30) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by a written undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free.

6. Procedures and Presumptions for Determination of Entitlement to Indemnification. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the DGCL and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:



(a) To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Indemnitee has requested indemnification. Notwithstanding the foregoing, any failure of Indemnitee to provide such a request to the Company, or to provide such a request in a timely fashion, shall not relieve the Company of any liability that it may have to Indemnitee unless, and to the extent that, such failure actually and materially prejudices the interests of the Company.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods, which shall be at the election of the Board (1) by a majority vote of the Disinterested Directors, even though less than a quorum, (2) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum, (3) if there are no Disinterested Directors or if the Disinterested Directors so direct, by independent legal counsel in a written opinion to the Board, a copy of which shall be delivered to the Indemnitee or (4) if so directed by the Board, by the stockholders of the Company.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by the Board. Indemnitee may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 13 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substantiated, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection that shall have been made by the Indemnitee to the Company's selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement. Anyone seeking to overcome this presumption

shall have the burden of proof and the burden of persuasion by clear and convincing evidence. Neither the failure of the Company (including by its directors or independent legal counsel) to have made a determination prior to the commencement of any action pursuant to this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company (including by its directors or independent legal counsel) that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee's action is based on the records or books of account of the Enterprise (as hereinafter defined), including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, agent or employee of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within sixty (60) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such sixty (60) day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the person, persons or entity making such determination with respect to entitlement to indemnification in good faith requires such additional time to obtain or evaluate documentation and/or information relating thereto; and provided further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination, the Board or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board or stockholder of the Company shall act reasonably and in good faith in making a determination regarding the Indemnitee's entitlement to indemnification under this Agreement. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

(i) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of Indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

#### 7. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification is made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 6(b).

(c) If a determination shall have been made pursuant to Section 6(b) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his or her rights under, or to recover damages for breach of, this Agreement, or to recover under any directors' and officers' liability insurance policies maintained by the Company, the Company shall pay on his or her behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 13 of this Agreement) actually and reasonably incurred by him or her in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee, shall (within ten (10) days after receipt by the Company of a written request therefore) advance, to the extent not prohibited by law, such expenses to Indemnitee, which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of Expenses or insurance recovery, as the case may be.

(f) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the final disposition of the Proceeding.

8. Non-Exclusivity; Survival of Rights; Insurance; Primacy of Indemnification; Subrogation.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the Bylaws, any agreement, a vote of stockholders, a resolution of directors of the Company, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in the DGCL, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any director, officer, employee, agent or fiduciary under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) Except as provided in paragraph (c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) Except as provided in paragraph (c) above, the Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

(e) Except as provided in paragraph (c) above, the Company's obligation to indemnify or advance Expenses hereunder to Indemnitee who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

9. Exception to Right of Indemnification. Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any claim made against Indemnitee:

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

(b) for an accounting of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law; or

(c) in connection with any Proceeding (or any part of any Proceeding) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees or other indemnitees, unless (i) the Board authorized the Proceeding (or any part of any Proceeding) prior to its initiation, or (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law.

10. Duration of Agreement. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is an officer or director of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise) and shall continue until the latest of (i) three (3) years after the date that Indemnitee shall have ceased to serve as a director or agent of the Company (as indicated in the parenthetical above) or (ii) the date of final termination of any Proceeding, including any appeal, then pending in respect of which Indemnitee is granted rights of indemnification or advancement hereunder (and of any proceeding, including any appeal, commenced pursuant to Section 7 of hereof), or (iii) the expiration of all statutes of limitation applicable to possible Proceedings to which Indemnitee may be subject arising out of or relating to Indemnitee's Corporate Status, whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives.

11. Security. To the extent requested by Indemnitee and approved by the Board, the Company may at any time and from time to time provide security to Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

12. Enforcement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumes the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(c) The Company shall not seek from a court, or agree to, a “bar order” that would have the effect of prohibiting or limiting the Indemnitee’s rights to receive advancement of expenses under this Agreement.

13. Definitions. For purposes of this Agreement:

(a) “Corporate Status” describes the status of a person who is or was a director, officer, employee, agent or fiduciary of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that such person is or was serving at the express written request of the Company.

(b) “Disinterested Director” means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(c) “Enterprise” shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise that Indemnitee is or was serving at the express written request of the Company as a director, officer, employee, agent or fiduciary.

(d) “Expenses” shall include all reasonable attorneys’ fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating or being or preparing to be a witness in a Proceeding, or responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding and any federal, state, local or foreign taxes imposed on the Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement, including without limitation the premium, security for and other costs relating to any cost bond, supersede as bond, other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(e) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(f) “Proceeding” includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of his or her Corporate Status, by reason of any action taken by him or her or of any inaction on his or her part while acting in his or her Corporate Status; in each case whether or not he or she is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement, but excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his or her rights under this Agreement.

14. Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision. Without limiting the generality of the foregoing, this Agreement is intended to confer upon Indemnitee indemnification rights to the fullest extent permitted by applicable laws. In the event any provision hereof conflicts with any applicable law, such provision shall be deemed modified, consistent with the aforementioned intent, to the extent necessary to resolve such conflict.

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

16. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with or otherwise receiving any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter that may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation that it may have to Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

17. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent:

(a) To Indemnitee at the address set forth below Indemnitee signature hereto.

(b) To the Company at:

Scilex Holding Company  
960 San Antonio Road



or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

18. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

19. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

20. Governing Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

*Signature Page To Follow*

IN WITNESS WHEREOF, the parties hereto have executed this Indemnification Agreement on and as of the day and year first above written.

**COMPANY**

**SCILEX HOLDING COMPANY**

By: \_\_\_\_\_  
Name:  
Title:  
Electronic Mail:

**INDEMNITEE**

By: \_\_\_\_\_  
Name:  
Address:  
Electronic Mail:

SIGNATURE PAGE  
INDEMNIFICATION AGREEMENT

**SCILEX HOLDING COMPANY**  
**2022 EQUITY INCENTIVE PLAN**  
**ADOPTED BY THE BOARD OF DIRECTORS: October 17, 2022**  
**APPROVED BY THE STOCKHOLDERS: November 9, 2022**  
**EFFECTIVE DATE: November 9, 2022**

**1. GENERAL.**

**(a) Plan Purpose.** The Company, by means of the Plan, seeks to secure and retain the services of Employees, Directors and Consultants, to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate and to provide a means by which such persons may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Awards.

**(b) Available Awards.** The Plan provides for the grant of the following Awards: (i) Incentive Stock Options; (ii) Nonstatutory Stock Options; (iii) SARs; (iv) Restricted Stock Awards; (v) RSU Awards; (vi) Performance Awards; and (vii) Other Awards.

**(c) Adoption Date; Effective Date.** The Plan will come into existence on the Adoption Date, but no Award may be granted prior to the Effective Date.

**2. SHARES SUBJECT TO THE PLAN.**

**(a) Share Reserve.** Subject to adjustment in accordance with Section 2(c) and any adjustments as necessary to implement any Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Awards will not exceed 14,622,712 shares plus a number of shares of Common Stock equal to the number of Returning Shares, if any, as such shares become available from time to time. In addition, subject to any adjustments as necessary to implement any Capitalization Adjustments, such aggregate number of shares of Common Stock will automatically increase on January 1 of each year for a period of ten years commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 4% of the total number of shares of Common Stock outstanding on December 31 of the preceding year, (ii) 7,311,356 shares of Common Stock, and (iii) such number of shares of Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year.

**(b) Aggregate Incentive Stock Option Limit.** Notwithstanding anything to the contrary in Section 2(a) and subject to any adjustments as necessary to implement any Capitalization Adjustments, the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is 14,622,712 shares, which such amount shall be increased commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 4% of the total number of shares of Common Stock outstanding on December 31 of the preceding year, (ii) 7,311,356 shares of Common Stock, and (iii) such number of shares of Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year.

**(c) Share Reserve Operation.**

**(i) Limit Applies to Common Stock Issued Pursuant to Awards.** For clarity, the Share Reserve is a limit on the number of shares of Common Stock that may be issued pursuant to Awards and does not limit the granting of Awards, except that the Company will keep available at all times the number of shares of Common Stock reasonably required to satisfy its obligations to issue shares pursuant to such Awards. Shares may be issued in connection with a merger or acquisition as permitted by, as applicable, Nasdaq Listing Rule 5635(c), NYSE Listed Company Manual Section 303A.08, NYSE American Company Guide Section 711 or other applicable rule, and such issuance will not reduce the number of shares available for issuance under the Plan.

**(ii) Actions that Do Not Constitute Issuance of Common Stock and Do Not Reduce Share Reserve.** The following actions do not result in an issuance of shares under the Plan and accordingly do not reduce the number of shares subject to the Share Reserve and available for issuance under the Plan: (1) the expiration or termination of any portion of an Award without the shares covered by such portion of the Award having been issued, (2) the settlement of any portion of an Award in cash (i.e., the Participant receives cash rather than Common Stock), (3) the withholding of shares that would otherwise be issued by the Company to satisfy the exercise, strike or purchase price of an Award; or (4) the withholding of shares that would otherwise be issued by the Company to satisfy a tax withholding obligation in connection with an Award. For the avoidance of doubt, with respect to a SAR, only shares of Common Stock which are issued upon settlement of the SAR shall count towards reducing the number of shares available for issuance under the Plan.

**(iii) Reversion of Previously Issued Shares of Common Stock to Share Reserve.** The following shares of Common Stock previously issued pursuant to an Award and accordingly initially deducted from the Share Reserve will be added back to the Share Reserve and again become available for issuance under the Plan: (1) any shares that are forfeited back to or repurchased by the Company because of a failure to meet a contingency or condition required for the vesting of such shares; (2) any shares that are reacquired by the Company to satisfy the exercise, strike or purchase price of an Award; and (3) any shares that are reacquired by the Company to satisfy a tax withholding obligation in connection with an Award.

### **3. ELIGIBILITY AND LIMITATIONS.**

**(a) Eligible Award Recipients.** Subject to the terms of the Plan, Employees, Directors and Consultants are eligible to receive Awards.

#### **(b) Specific Award Limitations.**

**(i) Limitations on Incentive Stock Option Recipients.** Incentive Stock Options may be granted only to Employees of the Company or a “parent corporation” or “subsidiary corporation” thereof (as such terms are defined in Sections 424(e) and (f) of the Code).

**(ii) Incentive Stock Option \$100,000 Limitation.** To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds \$100,000 (or such other limit established in the Code) or otherwise does not comply with the rules governing Incentive Stock Options, the Options or portions thereof that exceed such limit (according to the order in which they were granted) or otherwise do not comply with such rules will be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

**(iii) Limitations on Incentive Stock Options Granted to Ten Percent Stockholders.** A Ten Percent Stockholder may not be granted an Incentive Stock Option unless (i) the exercise price of such Option is at least 110% of the Fair Market Value on the date of grant of such Option and (ii) the Option is not exercisable after the expiration of five years from the date of grant of such Option.

**(iv) Limitations on Nonstatutory Stock Options and SARs.** Nonstatutory Stock Options and SARs may not be granted to Employees, Directors and Consultants who are providing Continuous Service only to any “parent” of the Company (as such term is defined in Rule 405) unless the stock underlying such Awards is treated as “service recipient stock” under Section 409A because the Awards are granted pursuant to a corporate transaction (such as a spin off transaction) or unless such Awards otherwise comply with the distribution requirements of Section 409A.

**(c) Aggregate Incentive Stock Option Limit.** The aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options is the number of shares specified in Section 2(b).

**(d) Non-Employee Director Compensation Limit.** The aggregate value of all compensation granted or paid, as applicable, in each case following the Effective Date, to any individual for service as a Non-Employee Director with respect to any fiscal year, including Awards granted and cash fees paid by the Company to such Non-Employee Director for his or her service as a Non-Employee Director, will not exceed (i) \$750,000 in total value or (ii) in the event such Non-Employee Director is first appointed or elected to the Board during such fiscal year, \$1,000,000 in total value, in each case calculating the value of any equity awards based on the grant date fair value of such equity awards for financial reporting purposes.

#### 4. OPTIONS AND STOCK APPRECIATION RIGHTS.

Each Option and SAR will have such terms and conditions as determined by the Board. Each Option will be designated in writing as an Incentive Stock Option or Nonstatutory Stock Option at the time of grant; provided, however, that if an Option is not so designated, then such Option will be a Nonstatutory Stock Option, and the shares purchased upon exercise of each type of Option will be separately accounted for. Each SAR will be denominated in shares of Common Stock equivalents. The terms and conditions of separate Options and SARs need not be identical; provided, however, that each Option Agreement and SAR Agreement will conform (through incorporation of provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

**(a) Term.** Subject to Section 3(b) regarding Ten Percent Stockholders, no Option or SAR will be exercisable after the expiration of ten years from the date of grant of such Award or such shorter period specified in the Award Agreement.

**(b) Exercise or Strike Price.** Subject to Section 3(b) regarding Ten Percent Stockholders, the exercise or strike price of each Option or SAR will not be less than 100% of the Fair Market Value on the date of grant of such Award. Notwithstanding the foregoing, an Option or SAR may be granted with an exercise or strike price lower than 100% of the Fair Market Value on the date of grant of such Award if such Award is granted pursuant to an assumption of or substitution for another option or stock appreciation right pursuant to a Corporate Transaction and in a manner consistent with the provisions of Sections 409A and, if applicable, 424(a) of the Code.

**(c) Exercise Procedure and Payment of Exercise Price for Options.** In order to exercise an Option, the Participant must provide notice of exercise to the Plan Administrator in accordance with the procedures specified in the Option Agreement or otherwise provided by the Company. The Board has the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The exercise price of an Option may be paid, to the extent permitted by Applicable Law and as determined by the Board, by one or more of the following methods of payment to the extent set forth in the Option Agreement:

**(i)** by cash or check, bank draft or money order payable to the Company;

**(ii)** pursuant to a “cashless exercise” program developed under Regulation T as promulgated by the U.S. Federal Reserve Board that, prior to the issuance of the Common Stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the exercise price to the Company from the sales proceeds;

**(iii)** by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock that are already owned by the Participant free and clear of any liens, claims, encumbrances or security interests, with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) at the time of exercise the Common Stock is publicly traded, (2) any remaining balance of the exercise price not satisfied by such delivery is paid by the Participant in cash or other permitted form of payment, (3) such delivery would not violate any Applicable Law or agreement restricting the redemption of the Common Stock, (4) any certificated shares are endorsed or accompanied by an executed assignment separate from certificate and (5) such shares have been held by the Participant for any minimum period necessary to avoid adverse accounting treatment as a result of such delivery;

**(iv)** if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value on the date of exercise that does not exceed the exercise price, provided that (1) such shares used to pay the exercise price will not be exercisable thereafter and (2) any remaining balance of the exercise price not satisfied by such net exercise is paid by the Participant in cash or other permitted form of payment; or

(v) in any other form of consideration that may be acceptable to the Board and permissible under Applicable Law.

**(d) Exercise Procedure and Payment of Appreciation Distribution for SARs.** In order to exercise any SAR, the Participant must provide notice of exercise to the Plan Administrator in accordance with the SAR Agreement. The appreciation distribution payable to a Participant upon the exercise of a SAR will not be greater than an amount equal to the excess of (i) the aggregate Fair Market Value on the date of exercise of a number of shares of Common Stock equal to the number of Common Stock equivalents that are vested and being exercised under such SAR, over (ii) the strike price of such SAR. Such appreciation distribution may be paid to the Participant in the form of Common Stock or cash (or any combination of Common Stock and cash) or in any other form of payment, as determined by the Board and specified in the SAR Agreement.

**(e) Transferability.** Options and SARs may not be transferred to third-party financial institutions for value. The Board may impose such additional limitations on the transferability of an Option or SAR as it determines. In the absence of any such determination by the Board, the following restrictions on the transferability of Options and SARs will apply, provided that except as explicitly provided herein, neither an Option nor a SAR may be transferred for consideration and provided, further, that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer:

**(i) Restrictions on Transfer.** An Option or SAR will not be transferable, except by will or by the laws of descent and distribution, and will be exercisable during the lifetime of the Participant only by the Participant; provided, however, that the Board may permit transfer of an Option or SAR in a manner that is not prohibited by applicable tax and securities laws upon the Participant's request, including to a trust if the Participant is considered to be the sole beneficial owner of such trust (as determined under Section 671 of the Code and applicable U.S. state law) while such Option or SAR is held in such trust, provided that the Participant and the trustee enter into a transfer and other agreements required by the Company.

**(ii) Domestic Relations Orders.** Notwithstanding the foregoing, subject to the execution of transfer documentation in a format acceptable to the Company and subject to the approval of the Board or a duly authorized Officer, an Option or SAR may be transferred pursuant to a domestic relations order.

**(f) Vesting.** The Board may impose such restrictions on or conditions to the vesting and/or exercisability of an Option or SAR as determined by the Board. Except as otherwise provided in the applicable Award Agreement or other written agreement between a Participant and the Company, vesting of Options and SARs will cease upon termination of the Participant's Continuous Service.

**(g) Termination of Continuous Service for Cause.** Except as explicitly otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service is terminated for Cause, the Participant's Options and SARs will terminate and be forfeited immediately upon such termination of Continuous Service, and the Participant will be prohibited from exercising any portion (including any vested portion) of such Awards on and after the date of such termination of Continuous Service and the Participant will have no further right, title or interest in such forfeited Award, the shares of Common Stock subject to the forfeited Award, or any consideration in respect of the forfeited Award.

**(h) Post-Termination Exercise Period Following Termination of Continuous Service for Reasons Other than Cause.** Subject to Section 4(i), if a Participant's Continuous Service terminates for any reason other than for Cause, the Participant may exercise his or her Option or SAR to the extent vested, but only within the following period of time or, if applicable, such other period of time provided in the Award Agreement or other written agreement between a Participant and the Company; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)):

**(i)** three months following the date of such termination if such termination is a termination without Cause (other than any termination due to the Participant's Disability or death);

(ii) 12 months following the date of such termination if such termination is due to the Participant's Disability;

(iii) 18 months following the date of such termination if such termination is due to the Participant's death; or

(iv) 18 months following the date of the Participant's death if such death occurs following the date of such termination but during the period such Award is otherwise exercisable (as provided in (i) or (ii) above).

Following the date of such termination, to the extent the Participant does not exercise such Award within the applicable Post-Termination Exercise Period (or, if earlier, prior to the expiration of the maximum term of such Award), such unexercised portion of the Award will terminate, and the Participant will have no further right, title or interest in terminated Award, the shares of Common Stock subject to the terminated Award, or any consideration in respect of the terminated Award.

**(i) Restrictions on Exercise; Extension of Exercisability.** A Participant may not exercise an Option or SAR at any time that the issuance of shares of Common Stock upon such exercise would violate Applicable Law. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service terminates for any reason other than for Cause and, at any time during the last thirty days of the applicable Post-Termination Exercise Period: (i) the exercise of the Participant's Option or SAR would be prohibited solely because the issuance of shares of Common Stock upon such exercise would violate Applicable Law, or (ii) the immediate sale of any shares of Common Stock issued upon such exercise would violate the Company's Trading Policy, then the applicable Post-Termination Exercise Period will be extended to the last day of the calendar month that commences following the date the Award would otherwise expire, with an additional extension of the exercise period to the last day of the next calendar month to apply if any of the foregoing restrictions apply at any time during such extended exercise period, generally without limitation as to the maximum permitted number of extensions; provided, however, that in no event may such Award be exercised after the expiration of its maximum term (as set forth in Section 4(a)).

**(j) Non-Exempt Employees.** No Option or SAR, whether or not vested, granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, will be first exercisable for any shares of Common Stock until at least six months following the date of grant of such Award. Notwithstanding the foregoing, in accordance with the provisions of the Worker Economic Opportunity Act, any vested portion of such Award may be exercised earlier than six months following the date of grant of such Award in the event of (i) such Participant's death or Disability, (ii) a Corporate Transaction in which such Award is not assumed, continued or substituted, (iii) a Change in Control, or (iv) such Participant's retirement (as such term may be defined in the Award Agreement or another applicable agreement or, in the absence of any such definition, in accordance with the Company's then current employment policies and guidelines). This Section 4(j) is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option or SAR will be exempt from his or her regular rate of pay.

**(k) Whole Shares.** Options and SARs may be exercised only with respect to whole shares of Common Stock or their equivalents.

## 5. AWARDS OTHER THAN OPTIONS AND STOCK APPRECIATION RIGHTS.

**(a) Restricted Stock Awards and RSU Awards.** Each Restricted Stock Award and RSU Award will have such terms and conditions as determined by the Board; provided, however, that each Restricted Stock Award Agreement and RSU Award Agreement will conform (through incorporation of the provisions hereof by reference in the Award Agreement or otherwise) to the substance of each of the following provisions:

**(i) Form of Award.**

**(1) RSAs:** To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock subject to a Restricted Stock Award may be (i) held in book entry form subject to the Company's instructions until such shares become vested or any other restrictions lapse, or (ii) evidenced by a certificate, which certificate will be held in such form and manner as determined by the Board. Unless otherwise determined by the Board, a Participant will have voting and other rights as a stockholder of the Company with respect to any shares subject to a Restricted Stock Award.

**(2) RSUs:** A RSU Award represents a Participant's right to be issued on a future date the number of shares of Common Stock that is equal to the number of restricted stock units subject to the RSU Award. As a holder of a RSU Award, a Participant is an unsecured creditor of the Company with respect to the Company's unfunded obligation, if any, to issue shares of Common Stock in settlement of such Award and nothing contained in the Plan or any RSU Agreement, and no action taken pursuant to its provisions, will create or be construed to create a trust of any kind or a fiduciary relationship between a Participant and the Company or an Affiliate or any other person. A Participant will not have voting or any other rights as a stockholder of the Company with respect to any RSU Award (unless and until shares are actually issued in settlement of a vested RSU Award).

**(ii) Consideration.**

**(1) RSA:** A Restricted Stock Award may be granted in consideration for (A) cash or check, bank draft or money order payable to the Company, (B) past services to the Company or an Affiliate, or (C) any other form of consideration as the Board may determine and permissible under Applicable Law.

**(2) RSU:** Unless otherwise determined by the Board at the time of grant, a RSU Award will be granted in consideration for the Participant's services to the Company or an Affiliate, such that the Participant will not be required to make any payment to the Company (other than such services) with respect to the grant or vesting of the RSU Award, or the issuance of any shares of Common Stock pursuant to the RSU Award. If, at the time of grant, the Board determines that any consideration must be paid by the Participant (in a form other than the Participant's services to the Company or an Affiliate) upon the issuance of any shares of Common Stock in settlement of the RSU Award, such consideration may be paid in any form of consideration as the Board may determine and permissible under Applicable Law.

**(iii) Vesting.** The Board may impose such restrictions on or conditions to the vesting of a Restricted Stock Award or RSU Award as determined by the Board. Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company or an Affiliate, vesting of Restricted Stock Awards and RSU Awards will cease upon termination of the Participant's Continuous Service.

**(iv) Termination of Continuous Service.** Except as otherwise provided in the Award Agreement or other written agreement between a Participant and the Company, if a Participant's Continuous Service terminates for any reason, (i) the Company may receive through a forfeiture condition or a repurchase right any or all of the shares of Common Stock held by the Participant under his or her Restricted Stock Award that have not vested as of the date of such termination as set forth in the Restricted Stock Award Agreement and (ii) any portion of his or her RSU Award that has not vested will be forfeited upon such termination and the Participant will have no further right, title or interest in the RSU Award, the shares of Common Stock issuable pursuant to the RSU Award, or any consideration in respect of the RSU Award.

**(v) Dividends and Dividend Equivalents.** Dividends or dividend equivalents may be paid or credited, as applicable, with respect to any shares of Common Stock subject to a Restricted Stock Award or RSU Award, as determined by the Board and specified in the Award Agreement).



**(vi) Settlement of RSU Awards.** A RSU Award may be settled by the issuance of shares of Common Stock or cash (or any combination thereof) or in any other form of payment, as determined by the Board and specified in the RSU Award Agreement. At the time of grant, the Board may determine to impose such restrictions or conditions that delay such delivery to a date following the vesting of the RSU Award.

**(b) Performance Awards.** With respect to any Performance Award, the length of any Performance Period, the Performance Goals to be achieved during the Performance Period, the other terms and conditions of such Award, and the measure of whether and to what degree such Performance Goals have been attained will be determined by the Board.

**(c) Other Awards.** Other Awards may be granted either alone or in addition to Awards provided for under Section 4 and the preceding provisions of this Section 5. Subject to the provisions of the Plan, the Board will have sole and complete discretion to determine the persons to whom and the time or times at which such Other Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Awards and all other terms and conditions of such Other Awards.

## **6. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.**

**(a) Capitalization Adjustments.** In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of shares of Common Stock subject to the Plan and the maximum number of shares by which the Share Reserve may annually increase pursuant to Section 2(a), (ii) the class(es) and maximum number of shares that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 2(b), and (iii) the class(es) and number of securities and exercise price, strike price or purchase price of Common Stock subject to outstanding Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive. Notwithstanding the foregoing, no fractional shares or rights for fractional shares of Common Stock shall be created in order to implement any Capitalization Adjustment. The Board shall determine an appropriate equivalent benefit, if any, for any fractional shares or rights to fractional shares that might be created by the adjustments referred to in the preceding provisions of this Section.

**(b) Dissolution or Liquidation.** Except as otherwise provided in the Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Awards (other than Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights or subject to a forfeiture condition may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such Award is providing Continuous Service, provided, however, that the Board may determine to cause some or all Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

**(c) Corporate Transaction.** The following provisions will apply to Awards in the event of a Corporate Transaction except as set forth in Section 11, and unless otherwise provided in the instrument evidencing the Award or any other written agreement between the Company or any Affiliate and the Participant or unless otherwise expressly provided by the Board at the time of grant of an Award.

**(i) Awards May Be Assumed.** In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Awards outstanding under the Plan or may substitute similar awards for Awards outstanding under the Plan (including but not limited to, awards to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Awards may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation (or its parent) may choose to assume or continue only a portion of an Award or substitute a similar award for only a portion of an Award, or may choose to assume or continue the Awards held by some, but not all Participants. The terms of any assumption, continuation or substitution will be set by the Board.

**(ii) Awards Held by Current Participants.** In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by Participants whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the “**Current Participants**”), the vesting of such Awards (and, with respect to Options and Stock Appreciation Rights, the time when such Awards may be exercised) will be accelerated in full to a date prior to the effective time of such Corporate Transaction (contingent upon the effectiveness of the Corporate Transaction) as the Board determines (or, if the Board does not determine such a date, to the date that is five days prior to the effective time of the Corporate Transaction), and such Awards will terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Awards will lapse (contingent upon the effectiveness of the Corporate Transaction). With respect to the vesting of Performance Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and that have multiple vesting levels depending on the level of performance, unless otherwise provided in the Award Agreement, the vesting of such Performance Awards will accelerate at 100% of the target level upon the occurrence of the Corporate Transaction. With respect to the vesting of Awards that will accelerate upon the occurrence of a Corporate Transaction pursuant to this subsection (ii) and are settled in the form of a cash payment, such cash payment will be made no later than 30 days following the occurrence of the Corporate Transaction.

**(iii) Awards Held by Persons other than Current Participants.** In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Awards or substitute similar awards for such outstanding Awards, then with respect to Awards that have not been assumed, continued or substituted and that are held by persons other than Current Participants, such Awards will terminate if not exercised (if applicable) prior to the occurrence of the Corporate Transaction; provided, however, that any reacquisition or repurchase rights held by the Company with respect to such Awards will not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

**(iv) Payment for Awards in Lieu of Exercise.** Notwithstanding the foregoing, in the event an Award will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Award may not exercise such Award but will receive a payment, in such form as may be determined by the Board, equal in value, at the effective time, to the excess, if any, of (1) the value of the property the Participant would have received upon the exercise of the Award (including, at the discretion of the Board, any unvested portion of such Award), over (2) any exercise price payable by such holder in connection with such exercise.

**(d) Appointment of Stockholder Representative.** As a condition to the receipt of an Award under this Plan, a Participant will be deemed to have agreed that the Award will be subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on the Participant’s behalf with respect to any escrow, indemnities and any contingent consideration.

**(e) No Restriction on Right to Undertake Transactions.** The grant of any Award under the Plan and the issuance of shares pursuant to any Award does not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company’s capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, rights or options to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

**7. ADMINISTRATION.**

**(a) Administration by Board.** The Board will administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in subsection (c) below.

**(b) Powers of Board.** The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

**(i)** To determine from time to time: (1) which of the persons eligible under the Plan will be granted Awards; (2) when and how each Award will be granted; (3) what type or combination of types of Award will be granted; (4) the provisions of each Award granted (which need not be identical), including the time or times when a person will be permitted to receive an issuance of Common Stock or other payment pursuant to an Award; (5) the number of shares of Common Stock or cash equivalent with respect to which an Award will be granted to each such person; (6) the Fair Market Value applicable to an Award; and (7) the terms of any Performance Award that is not valued in whole or in part by reference to, or otherwise based on, the Common Stock, including the amount of cash payment or other property that may be earned and the timing of payment.

**(ii)** To construe and interpret the Plan and Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Award Agreement, in a manner and to the extent it deems necessary or expedient to make the Plan or Award fully effective.

**(iii)** To settle all controversies regarding the Plan and Awards granted under it.

**(iv)** To accelerate the time at which an Award may first be exercised or the time during which an Award or any part thereof will vest, notwithstanding the provisions in the Award Agreement stating the time at which it may first be exercised or the time during which it will vest.

**(v)** To prohibit the exercise of any Option, SAR or other exercisable Award during a period of up to 30 days prior to the consummation of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Corporate Transaction, for reasons of administrative convenience.

**(vi)** To suspend or terminate the Plan at any time. Suspension or termination of the Plan will not Materially Impair rights and obligations under any Award granted while the Plan is in effect except with the written consent of the affected Participant.

**(vii)** To amend the Plan in any respect the Board deems necessary or advisable; provided, however, that stockholder approval will be required for any amendment to the extent required by Applicable Law. Except as provided above, rights under any Award granted before amendment of the Plan will not be Materially Impaired by any amendment of the Plan unless (1) the Company requests the consent of the affected Participant, and (2) such Participant consents in writing.

**(viii)** To submit any amendment to the Plan for stockholder approval.

**(ix)** To approve forms of Award Agreements for use under the Plan and to amend the terms of any one or more Awards, including, but not limited to, amendments to provide terms more favorable to the Participant than previously provided in the Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; provided however, that, (1) the Board shall not, without stockholder approval, reduce the exercise or strike price of an Option or SAR (other than in connection with a Capitalization Adjustment) and, at any time when the exercise or strike price of an Option or SAR is above the Fair Market Value of a share of Common Stock, the Board shall not, without stockholder approval, cancel and re-grant or exchange such Option or SAR for a new Award with a lower (or no) purchase price or for cash, and (2) a Participant's rights under any Award will not be Materially Impaired by any such amendment unless (A) the Company requests the consent of the affected Participant, and (B) such Participant consents in writing.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit and facilitate participation in the Plan by, or take advantage of specific tax treatment for Awards granted to, Employees, Directors or Consultants who are non-U.S. nationals or employed outside the United States (provided that Board approval will not be necessary for immaterial modifications to the Plan or any Award Agreement to ensure or facilitate compliance with the laws of the relevant non-U.S. jurisdiction).

**(c) Delegation to Committee.**

**(i) General.** The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration of the Plan is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to another Committee or a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Each Committee may retain the authority to concurrently administer the Plan with the Committee or subcommittee to which it has delegated its authority hereunder and may, at any time, revest in such Committee some or all of the powers previously delegated. The Board may retain the authority to concurrently administer the Plan with any Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

**(ii) Rule 16b-3 Compliance.** To the extent an Award is intended to qualify for the exemption from Section 16(b) of the Exchange Act that is available under Rule 16b-3 of the Exchange Act, the Award will be granted by the Board or a Committee that consists solely of two or more Non-Employee Directors, as determined under Rule 16b-3(b)(3) of the Exchange Act, and, thereafter, any action establishing or modifying the terms of the Award will be approved by the Board or a Committee meeting such requirements to the extent necessary for such exemption to remain available.

**(d) Effect of Board's Decision.** All determinations, interpretations and constructions made by the Board or any Committee in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

**(e) Delegation to an Officer.** The Board or any Committee may delegate to one or more Officers the authority to do one or both of the following (i) designate Employees who are not Officers to be recipients of Options and SARs (and, to the extent permitted by Applicable Law, other types of Awards) and, to the extent permitted by Applicable Law, the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Awards granted to such Employees; provided, however, that the resolutions or charter adopted by the Board or any Committee evidencing such delegation will specify the total number of shares of Common Stock that may be subject to the Awards granted by such Officer and that such Officer may not grant an Award to himself or herself. Any such Awards will be granted on the applicable form of Award Agreement most recently approved for use by the Board or the Committee, unless otherwise provided in the resolutions approving the delegation authority. Notwithstanding anything to the contrary herein, neither the Board nor any Committee may delegate to an Officer who is acting solely in the capacity of an Officer (and not also as a Director) the authority to determine the Fair Market Value.

## **8. TAX WITHHOLDING**

**(a) Withholding Authorization.** As a condition to acceptance of any Award under the Plan, a Participant authorizes withholding from payroll and any other amounts payable to such Participant, and otherwise agrees to make adequate provision for (including), any sums required to satisfy any U.S. and/or non-U.S. federal, state, or local tax or social insurance contribution withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise, vesting or settlement of such Award, as applicable. Accordingly, a Participant may not be able to exercise an Award even though the Award is vested, and the Company shall have no obligation to issue shares of Common Stock subject to an Award, unless and until such obligations are satisfied.

**(b) Satisfaction of Withholding Obligation.** To the extent permitted by the terms of an Award Agreement, the Company may, in its sole discretion, satisfy any U.S. and/or non-U.S. federal, state or local tax or social insurance withholding obligation relating to an Award by any of the following means or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Award; (iii) withholding cash from an Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; (v) by allowing a Participant to effectuate a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the U.S. Federal Reserve Board or (vi) by such other method as may be set forth in the Award Agreement.

**(c) No Obligation to Notify or Minimize Taxes; No Liability to Claims.** Except as required by Applicable Law, the Company has no duty or obligation to any Participant to advise such holder as to the time or manner of exercising such Award. Furthermore, the Company has no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of an Award or a possible period in which the Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of an Award to the holder of such Award and will not be liable to any holder of an Award for any adverse tax consequences to such holder in connection with an Award. As a condition to accepting an Award under the Plan, each Participant (i) agrees to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from such Award or other Company compensation and (ii) acknowledges that such Participant was advised to consult with his or her own personal tax, financial and other legal advisors regarding the tax consequences of the Award and has either done so or knowingly and voluntarily declined to do so. Additionally, each Participant acknowledges any Option or SAR granted under the Plan is exempt from Section 409A only if the exercise or strike price is at least equal to the “fair market value” of the Common Stock on the date of grant as determined by the Internal Revenue Service and there is no other impermissible deferral of compensation associated with the Award. Additionally, as a condition to accepting an Option or SAR granted under the Plan, each Participant agrees not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the U.S. Internal Revenue Service asserts that such exercise price or strike price is less than the “fair market value” of the Common Stock on the date of grant as subsequently determined by the U.S. Internal Revenue Service.

**(d) Withholding Indemnification.** As a condition to accepting an Award under the Plan, in the event that the amount of the Company’s and/or its Affiliate’s withholding obligation in connection with such Award was greater than the amount actually withheld by the Company and/or its Affiliates, each Participant agrees to indemnify and hold the Company and/or its Affiliates harmless from any failure by the Company and/or its Affiliates to withhold the proper amount.

## **9. MISCELLANEOUS.**

**(a) Source of Shares.** The stock issuable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market or otherwise.

**(b) Use of Proceeds from Sales of Common Stock.** Proceeds from the sale of shares of Common Stock pursuant to Awards will constitute general funds of the Company.

**(c) Corporate Action Constituting Grant of Awards.** Corporate action constituting a grant by the Company of an Award to any Participant will be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Award is communicated to, or actually received or accepted by, the Participant. In the event that the corporate records (e.g., Board consents, resolutions or minutes) documenting the corporate action approving the grant contain terms (e.g., exercise price, vesting schedule or number of shares) that are inconsistent with those in the Award Agreement or related grant documents as a result of a clerical error in the Award Agreement or related grant documents, the corporate records will control and the Participant will have no legally binding right to the incorrect term in the Award Agreement or related grant documents.

**(d) Stockholder Rights.** No Participant will be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Award unless and until (i) such Participant has satisfied all requirements for exercise of the Award pursuant to its terms, if applicable, and (ii) the issuance of the Common Stock subject to such Award is reflected in the records of the Company.

**(e) No Employment or Other Service Rights.** Nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award granted pursuant thereto will confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Award was granted or affect the right of the Company or an Affiliate to terminate at will and without regard to any future vesting opportunity that a Participant may have with respect to any Award (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the U.S. state or non-U.S. jurisdiction in which the Company or the Affiliate is incorporated, as the case may be. Further, nothing in the Plan, any Award Agreement or any other instrument executed thereunder or in connection with any Award will constitute any promise or commitment by the Company or an Affiliate regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of employment or service or confer any right or benefit under the Award or the Plan unless such right or benefit has specifically accrued under the terms of the Award Agreement and/or Plan.

**(f) Change in Time Commitment.** In the event a Participant's regular level of time commitment in the performance of his or her services for the Company and any Affiliates is reduced (for example, and without limitation, if the Participant is an Employee of the Company and the Employee has a change in status from a full-time Employee to a part-time Employee or takes an extended leave of absence) after the date of grant of any Award to the Participant, the Board may determine, to the extent permitted by Applicable Law, to (i) make a corresponding reduction in the number of shares or cash amount subject to any portion of such Award that is scheduled to vest or become payable after the date of such change in time commitment, and (ii) in lieu of or in combination with such a reduction, extend the vesting or payment schedule applicable to such Award. In the event of any such reduction, the Participant will have no right with respect to any portion of the Award that is so reduced or extended.

**(g) Execution of Additional Documents.** As a condition to accepting an Award under the Plan, the Participant agrees to execute any additional documents or instruments necessary or desirable, as determined in the Plan Administrator's sole discretion, to carry out the purposes or intent of the Award, or facilitate compliance with securities and/or other regulatory requirements, in each case at the Plan Administrator's request.

**(h) Electronic Delivery and Participation.** Any reference herein or in an Award Agreement to a "written" agreement or document will include any agreement or document delivered electronically, filed publicly at [www.sec.gov](http://www.sec.gov) (or any successor website thereto) or posted on the Company's intranet (or other shared electronic medium controlled by the Company to which the Participant has access). By accepting any Award the Participant consents to receive documents by electronic delivery and to participate in the Plan through any on-line electronic system established and maintained by the Plan Administrator or another third party selected by the Plan Administrator. The form of delivery of any Common Stock (e.g., a stock certificate or electronic entry evidencing such shares) shall be determined by the Company.

**(i) Clawback/Recovery.** All Awards granted under the Plan will be subject to recoupment in accordance with any clawback policy that the Company is required to adopt pursuant to the listing standards of any national securities exchange or association on which the Company's securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act or other Applicable Law and any clawback policy that the Company otherwise adopts, to the extent applicable and permissible under Applicable Law. In addition, the Board may impose such other clawback, recovery or recoupment provisions in an Award Agreement as the Board determines necessary or appropriate, including but not limited to a reacquisition right in respect of previously acquired shares of Common Stock or other cash or property upon the occurrence of Cause. No recovery of compensation under such a clawback policy will be an event giving rise to a Participant's right to voluntarily terminate employment upon a "resignation for good reason," or for a "constructive termination" or any similar term under any plan of or agreement with the Company.

**(j) Securities Law Compliance.** A Participant will not be issued any shares in respect of an Award unless either (i) the shares are registered under the Securities Act; or (ii) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Each Award also must comply with other Applicable Law governing the Award, and a Participant will not receive such shares if the Company determines that such receipt would not be in material compliance with Applicable Law.

**(k) Transfer or Assignment of Awards; Issued Shares.** Except as expressly provided in the Plan or the form of Award Agreement, Awards granted under the Plan may not be transferred or assigned by the Participant. After the vested shares subject to an Award have been issued, or in the case of Restricted Stock and similar awards, after the issued shares have vested, the holder of such shares is free to assign, hypothecate, donate, encumber or otherwise dispose of any interest in such shares provided that any such actions are in compliance with the provisions herein, the terms of the Trading Policy and Applicable Law.

**(l) Effect on Other Employee Benefit Plans.** The value of any Award granted under the Plan, as determined upon grant, vesting or settlement, shall not be included as compensation, earnings, salaries, or other similar terms used when calculating any Participant's benefits under any employee benefit plan sponsored by the Company or any Affiliate, except as such plan otherwise expressly provides. The Company expressly reserves its rights to amend, modify, or terminate any of the Company's or any Affiliate's employee benefit plans.

**(m) Deferrals.** To the extent permitted by Applicable Law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals will be made in accordance with the requirements of Section 409A.

**(n) Section 409A.** Unless otherwise expressly provided for in an Award Agreement, the Plan and Award Agreements will be interpreted to the greatest extent possible in a manner that makes the Plan and the Awards granted hereunder exempt from Section 409A, and, to the extent not so exempt, in compliance with the requirements of Section 409A. If the Board determines that any Award granted hereunder is not exempt from and is therefore subject to Section 409A, the Award Agreement evidencing such Award will incorporate the terms and conditions necessary to avoid the consequences specified in Section 409A(a)(1) of the Code, and to the extent an Award Agreement is silent on terms necessary for compliance, such terms are hereby incorporated by reference into the Award Agreement. Notwithstanding anything to the contrary in this Plan (and unless the Award Agreement specifically provides otherwise), if the shares of Common Stock are publicly traded, and if a Participant holding an Award that constitutes "deferred compensation" under Section 409A is a "specified employee" for purposes of Section 409A, no distribution or payment of any amount that is due because of a "separation from service" (as defined in Section 409A without regard to alternative definitions thereunder) will be issued or paid before the date that is six months and one day following the date of such Participant's "separation from service" or, if earlier, the date of the Participant's death, unless such distribution or payment can be made in a manner that complies with Section 409A, and any amounts so deferred will be paid in a lump sum on the day after such six month period elapses, with the balance paid thereafter on the original schedule.

**(o) Choice of Law.** This Plan and any controversy arising out of or relating to this Plan shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to conflict of law principles that would result in any application of any law other than the law of the State of Delaware.

## **10. COVENANTS OF THE COMPANY.**

**(a) Compliance with Law.** The Company will seek to obtain from each regulatory commission or agency, as may be deemed necessary, having jurisdiction over the Plan such authority as may be required to grant Awards and to issue and sell shares of Common Stock upon exercise or vesting of the Awards; provided, however, that this undertaking will not require the Company to register under the Securities Act the Plan, any Award or any Common Stock issued or issuable pursuant to any such Award. If, after reasonable efforts and at a reasonable cost, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary or advisable for the lawful issuance and sale of Common Stock under the Plan, the Company will be relieved from any liability for failure to issue and sell Common Stock upon exercise or vesting of such Awards unless and until such authority is obtained. A Participant is not eligible for the grant of an Award or the subsequent issuance of Common Stock pursuant to the Award if such grant or issuance would be in violation of any Applicable Law.

**11. ADDITIONAL RULES FOR AWARDS SUBJECT TO SECTION 409A.**

**(a) Application.** Unless the provisions of this Section of the Plan are expressly superseded by the provisions in the form of Award Agreement, the provisions of this Section shall apply and shall supersede anything to the contrary set forth in the Award Agreement for a Non-Exempt Award.

**(b) Non-Exempt Awards Subject to Non-Exempt Severance Arrangements.** To the extent a Non-Exempt Award is subject to Section 409A due to application of a Non-Exempt Severance Arrangement, the following provisions of this subsection (b) apply.

**(i)** If the Non-Exempt Award vests in the ordinary course during the Participant's Continuous Service in accordance with the vesting schedule set forth in the Award Agreement, and does not accelerate vesting under the terms of a Non-Exempt Severance Arrangement, in no event will the shares be issued in respect of such Non-Exempt Award any later than the later of: (i) December 31st of the calendar year that includes the applicable vesting date, or (ii) the 60th day that follows the applicable vesting date.

**(ii)** If vesting of the Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with the Participant's Separation from Service, and such vesting acceleration provisions were in effect as of the date of grant of the Non-Exempt Award and, therefore, are part of the terms of such Non-Exempt Award as of the date of grant, then the shares will be earlier issued in settlement of such Non-Exempt Award upon the Participant's Separation from Service in accordance with the terms of the Non-Exempt Severance Arrangement, but in no event later than the 60th day that follows the date of the Participant's Separation from Service. However, if at the time the shares would otherwise be issued the Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of such Participant's Separation from Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

**(iii)** If vesting of a Non-Exempt Award accelerates under the terms of a Non-Exempt Severance Arrangement in connection with a Participant's Separation from Service, and such vesting acceleration provisions were not in effect as of the date of grant of the Non-Exempt Award and, therefore, are not a part of the terms of such Non-Exempt Award on the date of grant, then such acceleration of vesting of the Non-Exempt Award shall not accelerate the issuance date of the shares, but the shares shall instead be issued on the same schedule as set forth in the Grant Notice as if they had vested in the ordinary course during the Participant's Continuous Service, notwithstanding the vesting acceleration of the Non-Exempt Award. Such issuance schedule is intended to satisfy the requirements of payment on a specified date or pursuant to a fixed schedule, as provided under Treasury Regulations Section 1.409A-3(a)(4).

**(c) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Employees and Consultants.** The provisions of this subsection (c) shall apply and shall supersede anything to the contrary set forth in the Plan with respect to the permitted treatment of any Non-Exempt Award in connection with a Corporate Transaction if the Participant was either an Employee or Consultant upon the applicable date of grant of the Non-Exempt Award.



**(i) Vested Non-Exempt Awards.** The following provisions shall apply to any Vested Non-Exempt Award in connection with a Corporate Transaction:

**(1)** If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Vested Non-Exempt Award. Upon the Section 409A Change in Control the settlement of the Vested Non-Exempt Award will automatically be accelerated and the shares will be immediately issued in respect of the Vested Non-Exempt Award. Alternatively, the Company may instead provide that the Participant will receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control.

**(2)** If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute each Vested Non-Exempt Award. The shares to be issued in respect of the Vested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of the Fair Market Value of the shares made on the date of the Corporate Transaction.

**(ii) Unvested Non-Exempt Awards.** The following provisions shall apply to any Unvested Non-Exempt Award unless otherwise determined by the Board pursuant to subsection (e) of this Section.

**(1)** In the event of a Corporate Transaction, the Acquiring Entity shall assume, continue or substitute any Unvested Non-Exempt Award. Unless otherwise determined by the Board, any Unvested Non-Exempt Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of any Unvested Non-Exempt Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value of the shares made on the date of the Corporate Transaction.

**(2)** If the Acquiring Entity will not assume, substitute or continue any Unvested Non-Exempt Award in connection with a Corporate Transaction, then such Award shall automatically terminate and be forfeited upon the Corporate Transaction with no consideration payable to any Participant in respect of such forfeited Unvested Non-Exempt Award. Notwithstanding the foregoing, to the extent permitted and in compliance with the requirements of Section 409A, the Board may in its discretion determine to elect to accelerate the vesting and settlement of the Unvested Non-Exempt Award upon the Corporate Transaction, or instead substitute a cash payment equal to the Fair Market Value of such shares that would otherwise be issued to the Participant, as further provided in subsection (e)(ii) below. In the absence of such discretionary election by the Board, any Unvested Non-Exempt Award shall be forfeited without payment of any consideration to the affected Participants if the Acquiring Entity will not assume, substitute or continue the Unvested Non-Exempt Awards in connection with the Corporate Transaction.

**(3)** The foregoing treatment shall apply with respect to all Unvested Non-Exempt Awards upon any Corporate Transaction, and regardless of whether or not such Corporate Transaction is also a Section 409A Change in Control.

**(d) Treatment of Non-Exempt Awards Upon a Corporate Transaction for Non-Employee Directors.** The following provisions of this subsection (d) shall apply and shall supersede anything to the contrary that may be set forth in the Plan with respect to the permitted treatment of a Non-Exempt Director Award in connection with a Corporate Transaction.

(i) If the Corporate Transaction is also a Section 409A Change in Control then the Acquiring Entity may not assume, continue or substitute the Non-Exempt Director Award. Upon the Section 409A Change in Control the vesting and settlement of any Non-Exempt Director Award will automatically be accelerated and the shares will be immediately issued to the Participant in respect of the Non-Exempt Director Award. Alternatively, the Company may provide that the Participant will instead receive a cash settlement equal to the Fair Market Value of the shares that would otherwise be issued to the Participant upon the Section 409A Change in Control pursuant to the preceding provision.

(ii) If the Corporate Transaction is not also a Section 409A Change in Control, then the Acquiring Entity must either assume, continue or substitute the Non-Exempt Director Award. Unless otherwise determined by the Board, the Non-Exempt Director Award will remain subject to the same vesting and forfeiture restrictions that were applicable to the Award prior to the Corporate Transaction. The shares to be issued in respect of the Non-Exempt Director Award shall be issued to the Participant by the Acquiring Entity on the same schedule that the shares would have been issued to the Participant if the Corporate Transaction had not occurred. In the Acquiring Entity's discretion, in lieu of an issuance of shares, the Acquiring Entity may instead substitute a cash payment on each applicable issuance date, equal to the Fair Market Value of the shares that would otherwise be issued to the Participant on such issuance dates, with the determination of Fair Market Value made on the date of the Corporate Transaction.

(e) If the RSU Award is a Non-Exempt Award, then the provisions in this Section 11(e) shall apply and supersede anything to the contrary that may be set forth in the Plan or the Award Agreement with respect to the permitted treatment of such Non-Exempt Award:

(i) Any exercise by the Board of discretion to accelerate the vesting of a Non-Exempt Award shall not result in any acceleration of the scheduled issuance dates for the shares in respect of the Non-Exempt Award unless earlier issuance of the shares upon the applicable vesting dates would be in compliance with the requirements of Section 409A.

(ii) The Company explicitly reserves the right to earlier settle any Non-Exempt Award to the extent permitted and in compliance with the requirements of Section 409A, including pursuant to any of the exemptions available in Treasury Regulations Section 1.409A-3(j)(4)(ix).

(iii) To the extent the terms of any Non-Exempt Award provide that it will be settled upon a Change in Control or Corporate Transaction, to the extent it is required for compliance with the requirements of Section 409A, the Change in Control or Corporate Transaction event triggering settlement must also constitute a Section 409A Change in Control. To the extent the terms of a Non-Exempt Award provide that it will be settled upon a termination of employment or termination of Continuous Service, to the extent it is required for compliance with the requirements of Section 409A, the termination event triggering settlement must also constitute a Separation From Service. However, if at the time the shares would otherwise be issued to a Participant in connection with a "separation from service" such Participant is subject to the distribution limitations contained in Section 409A applicable to "specified employees," as defined in Section 409A(a)(2)(B)(i) of the Code, such shares shall not be issued before the date that is six months following the date of the Participant's Separation From Service, or, if earlier, the date of the Participant's death that occurs within such six month period.

(iv) The provisions in this subsection (e) for delivery of the shares in respect of the settlement of a RSU Award that is a Non-Exempt Award are intended to comply with the requirements of Section 409A so that the delivery of the shares to the Participant in respect of such Non-Exempt Award will not trigger the additional tax imposed under Section 409A, and any ambiguities herein will be so interpreted.

## **12. SEVERABILITY.**

If all or any part of the Plan or any Award Agreement is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity shall not invalidate any portion of the Plan or such Award Agreement not declared to be unlawful or invalid. Any Section of the Plan or any Award Agreement (or part of such a Section) so declared to be unlawful or invalid shall, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

### 13. TERMINATION OF THE PLAN.

The Board may suspend or terminate the Plan at any time. No Incentive Stock Options may be granted after the tenth anniversary of the earlier of: (i) the Adoption Date, or (ii) the date the Plan is approved by the Company's stockholders. No Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

### 14. DEFINITIONS.

As used in the Plan, the following definitions apply to the capitalized terms indicated below:

(a) "**Acquiring Entity**" means the surviving or acquiring corporation (or its parent company) in connection with a Corporate Transaction.

(b) "**Adoption Date**" means the date the Plan is first approved by the Board or Compensation Committee.

(c) "**Affiliate**" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(d) "**Applicable Law**" means shall mean the Code and any applicable U.S. or non-U.S. securities, federal, state, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of any applicable self-regulating organization such as the Nasdaq Stock Market, the New York Stock Exchange or the Financial Industry Regulatory Authority).

(e) "**Award**" means any right to receive Common Stock, cash or other property granted under the Plan (including an Incentive Stock Option, a Nonstatutory Stock Option, a Restricted Stock Award, a RSU Award, a SAR, a Performance Award or any Other Award).

(f) "**Award Agreement**" means a written agreement between the Company and a Participant evidencing the terms and conditions of an Award. The Award Agreement generally consists of the Grant Notice and the agreement containing the written summary of the general terms and conditions applicable to the Award and which is provided to a Participant along with the Grant Notice.

(g) "**Board**" means the board of directors of the Company (or its designee). Any decision or determination made by the Board shall be a decision or determination that is made in the sole discretion of the Board (or its designee), and such decision or determination shall be final and binding on all Participants.

(h) "**Capitalization Adjustment**" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Award after the Effective Date without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, reverse stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or any similar equity restructuring transaction, as that term is used in Statement of Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(i) "**Cause**" has the meaning ascribed to such term in any written agreement between the Participant and the Company defining such term and, in the absence of such agreement, such term means, with respect to a Participant, the occurrence of any of the following events: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or intentional falsification of any Company or Affiliate documents or records; (ii) the Participant's material failure to abide by the Company's Code of Business Conduct and Ethics or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct and policies of any Affiliate, as applicable); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of the Company or any of its Affiliates (including, without limitation, the Participant's improper use or disclosure of Company or Affiliate confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on the Company's or its Affiliate's reputation or business; (v) the Participant's repeated failure or inability to perform any reasonable assigned duties after written notice from the Company (or its Affiliate, as applicable) of, and a reasonable opportunity to cure, such failure or inability; (vi) any material breach by the Participant of any employment or service agreement between the Participant and the Company (or its Affiliate, as applicable), which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with the Company (or its Affiliate, as applicable). The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause will be made by the Board with respect to Participants who are executive officers of the Company and by the Company's Chief Executive Officer or his or her designee with respect to Participants who are not executive officers of the Company. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Awards held by such Participant will have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(j) “**Change in Control**” or “**Change of Control**” means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events; provided, however, to the extent necessary to avoid adverse personal income tax consequences to the Participant in connection with an Award, also constitutes a Section 409A Change in Control:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company directly from the Company, (B) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person that acquires the Company’s securities in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities, or (C) solely because the level of Ownership held by any Exchange Act Person (the “**Subject Person**”) exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than 50% of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than 50% of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than 50% of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the “*Incumbent Board*”) cease for any reason to constitute at least a majority of the members of the Board; provided, however, that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of this Plan, be considered as a member of the Incumbent Board.

Notwithstanding the foregoing or any other provision of this Plan, (A) the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company, and (B) the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Awards subject to such agreement; provided, however, that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

(k) “*Code*” means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(l) “*Committee*” means the Compensation Committee and any other committee of one or more Directors to whom authority has been delegated by the Board or Compensation Committee in accordance with the Plan.

(m) “*Common Stock*” means the common stock of the Company.

(n) “*Company*” means Scilex Holding Company, a Delaware corporation, and any successor corporation thereto.

(o) “*Compensation Committee*” means the Compensation Committee of the Board.

(p) “*Consultant*” means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, will not cause a Director to be considered a “Consultant” for purposes of the Plan. Notwithstanding the foregoing, a person is treated as a Consultant under this Plan only if a Form S-8 Registration Statement under the Securities Act is available to register either the offer or the sale of the Company’s securities to such person.

(q) “*Continuous Service*” means that the Participant’s service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Director or Consultant or a change in the Entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant’s service with the Company or an Affiliate, will not terminate a Participant’s Continuous Service; provided, however, that if the Entity for which a Participant is rendering services ceases to qualify as an Affiliate, as determined by the Board, such Participant’s Continuous Service will be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. For example, a change in status from an Employee of the Company to a Consultant of an Affiliate or to a Director will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party’s sole discretion, may determine whether Continuous Service will be considered interrupted in the case of (i) any leave of absence approved by the Board or chief executive officer, including sick leave, military leave or any other personal leave, or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence will be treated as Continuous Service for purposes of vesting in an Award only to such extent as may be provided in the Company’s leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law. In addition, to the extent required for exemption from or compliance with Section 409A, the determination of whether there has been a termination of Continuous Service will be made, and such term will be construed, in a manner that is consistent with the definition of “separation from service” as defined under U.S. Treasury Regulation Section 1.409A-1(h) (without regard to any alternative definition thereunder).

(r) “**Corporate Transaction**” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(s) “**Director**” means a member of the Board.

(t) “**determine**” or “**determined**” means as determined by the Board or the Committee (or its designee) in its sole discretion.

(u) “**Disability**” means, with respect to a Participant, such Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) of the Code, and will be determined by the Board on the basis of such medical evidence as the Board deems warranted under the circumstances.

(v) “**Effective Date**” means the later of (i) the date on which the Plan is approved by the stockholders of the Company in accordance with Section 13, and (ii) the day that is one day prior to the date of the closing of the transactions contemplated by that certain Agreement and Plan of Merger, dated as of March 17, 2022 (as amended), by and among the Company and the other parties thereto.

(w) “**Employee**” means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(x) “**Employer**” means the Company or the Affiliate that employs the Participant.

(y) “**Entity**” means a corporation, partnership, limited liability company or other entity.

(z) “**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(aa) “**Exchange Act Person**” means any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that “Exchange Act Person” will not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to a registered public offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or “group” (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than 50% of the combined voting power of the Company’s then outstanding securities.

**(bb) “Fair Market Value”** means, as of any date, unless otherwise determined by the Board, the value of the Common Stock (as determined on a per share or aggregate basis, as applicable) determined as follows: (i) if the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in a source the Board deems reliable; (ii) if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing selling price on the last preceding date for which such quotation exists; or (iii) in the absence of such markets for the Common Stock, or if otherwise determined by the Board, the Fair Market Value will be determined by the Board in good faith and in a manner that complies with Sections 409A and 422 of the Code.

**(cc) “Governmental Body”** means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) U.S. or non-U.S. federal, state, local, municipal, or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal, and for the avoidance of doubt, any tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the Nasdaq Stock Market, the New York Stock Exchange, and the Financial Industry Regulatory Authority).

**(dd) “Grant Notice”** means the notice provided to a Participant that he or she has been granted an Award under the Plan and which includes the name of the Participant, the type of Award, the date of grant of the Award, number of shares of Common Stock subject to the Award or potential cash payment right, (if any), the vesting schedule for the Award (if any) and other key terms applicable to the Award.

**(ee) “Incentive Stock Option”** means an option granted pursuant to Section 4 of the Plan that is intended to be, and qualifies as, an “incentive stock option” within the meaning of Section 422 of the Code.

**(ff) “Materially Impair”** means any amendment to the terms of the Award that materially adversely affects the Participant’s rights under the Award. A Participant’s rights under an Award will not be deemed to have been Materially Impaired by any such amendment if the Board, in its sole discretion, determines that the amendment, taken as a whole, does not materially impair the Participant’s rights. For example, the following types of amendments to the terms of an Award do not Materially Impair the Participant’s rights under the Award: (i) imposition of reasonable restrictions on the minimum number of shares subject to an Option that may be exercised, (ii) to maintain the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iii) to change the terms of an Incentive Stock Option in a manner that disqualifies, impairs or otherwise affects the qualified status of the Award as an Incentive Stock Option under Section 422 of the Code; (iv) to clarify the manner of exemption from, or to bring the Award into compliance with or qualify it for an exemption from, Section 409A; or (v) to comply with other Applicable Laws.

**(gg) “Non-Employee Director”** means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act (“**Regulation S-K**”)), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a “non-employee director” for purposes of Rule 16b-3.

**(hh) “Non-Exempt Award”** means any Award that is subject to, and not exempt from, Section 409A, including as the result of (i) a deferral of the issuance of the shares subject to the Award which is elected by the Participant or imposed by the Company or (ii) the terms of any Non-Exempt Severance Agreement.

**(ii) “Non-Exempt Director Award”** means a Non-Exempt Award granted to a Participant who was a Director but not an Employee on the applicable grant date.

(jj) **“Non-Exempt Severance Arrangement”** means a severance arrangement or other agreement between the Participant and the Company that provides for acceleration of vesting of an Award and issuance of the shares in respect of such Award upon the Participant’s termination of employment or separation from service (as such term is defined in Section 409A(a)(2)(A)(i) of the Code (and without regard to any alternative definition thereunder)) (**“Separation from Service”**) and such severance benefit does not satisfy the requirements for an exemption from application of Section 409A provided under Treasury Regulations Section 1.409A-1(b)(4), 1.409A-1(b)(9) or otherwise.

(kk) **“Nonstatutory Stock Option”** means any option granted pursuant to Section 4 of the Plan that does not qualify as an Incentive Stock Option.

(ll) **“Officer”** means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act.

(mm) **“Option”** means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(nn) **“Option Agreement”** means a written agreement between the Company and the Optionholder evidencing the terms and conditions of the Option grant. The Option Agreement includes the Grant Notice for the Option and the agreement containing the written summary of the general terms and conditions applicable to the Option and which is provided to a Participant along with the Grant Notice. Each Option Agreement will be subject to the terms and conditions of the Plan.

(oo) **“Optionholder”** means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(pp) **“Other Award”** means an award valued in whole or in part by reference to, or otherwise based on, Common Stock, including the appreciation in value thereof (e.g., options or stock rights with an exercise price or strike price less than 100% of the Fair Market Value at the time of grant) that is not an Incentive Stock Options, Nonstatutory Stock Option, SAR, Restricted Stock Award, RSU Award or Performance Award.

(qq) **“Other Award Agreement”** means a written agreement between the Company and a holder of an Other Award evidencing the terms and conditions of an Other Award grant. Each Other Award Agreement will be subject to the terms and conditions of the Plan.

(rr) **“Own,” “Owned,” “Owner,” “Ownership”** means that a person or Entity will be deemed to “Own,” to have “Owned,” to be the “Owner” of or to have acquired “Ownership” of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(ss) **“Participant”** means an Employee, Director or Consultant to whom an Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Award.

(tt) **“Performance Award”** means an Award that may vest or may be exercised or a cash award that may vest or become earned and paid contingent upon the attainment during a Performance Period of certain Performance Goals and which is granted under the terms and conditions of Section 5(b) pursuant to such terms as are approved by the Board. In addition, to the extent permitted by Applicable Law and set forth in the applicable Award Agreement, the Board may determine that cash or other property may be used in payment of Performance Awards. Performance Awards that are settled in cash or other property are not required to be valued in whole or in part by reference to, or otherwise based on, the Common Stock.



**(uu) “Performance Criteria”** means the one or more criteria that the Board will select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that will be used to establish such Performance Goals may be based on any one of, or combination of, the following as determined by the Board: earnings (including earnings per share and net earnings); earnings before interest, taxes and depreciation; earnings before interest, taxes, depreciation and amortization; total stockholder return; return on equity or average stockholder’s equity; return on assets, investment, or capital employed; stock price; margin (including gross margin); income (before or after taxes); operating income; operating income after taxes; pre-tax profit; operating cash flow; sales or revenue targets; increases in revenue or product revenue; expenses and cost reduction goals; improvement in or attainment of working capital levels; economic value added (or an equivalent metric); market share; cash flow; cash flow per share; share price performance; debt reduction; customer satisfaction; stockholders’ equity; capital expenditures; debt levels; operating profit or net operating profit; workforce diversity; growth of net income or operating income; billings; pre-clinical development related compound goals; financing; regulatory milestones, including approval of a compound; stockholder liquidity; corporate governance and compliance; product commercialization; intellectual property; personnel matters; progress of internal research or clinical programs; progress of partnered programs; partner satisfaction; budget management; clinical achievements; completing phases of a clinical study (including the treatment phase); announcing or presenting preliminary or final data from clinical studies; in each case, whether on particular timelines or generally; timely completion of clinical trials; submission of INDs and NDAs and other regulatory achievements; partner or collaborator achievements; internal controls, including those related to the Sarbanes-Oxley Act of 2002; research progress, including the development of programs; investor relations, analysts and communication; manufacturing achievements (including obtaining particular yields from manufacturing runs and other measurable objectives related to process development activities); strategic partnerships or transactions (including in-licensing and out-licensing of intellectual property; establishing relationships with commercial entities with respect to the marketing, distribution and sale of the Company’s products (including with group purchasing organizations, distributors and other vendors); supply chain achievements (including establishing relationships with manufacturers or suppliers of active pharmaceutical ingredients and other component materials and manufacturers of the Company’s products); co-development, co-marketing, profit sharing, joint venture or other similar arrangements; individual performance goals; corporate development and planning goals; and other measures of performance selected by the Board or Committee.

**(vv) “Performance Goals”** means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. Unless specified otherwise by the Board (i) in the Award Agreement at the time the Award is granted or (ii) in such other document setting forth the Performance Goals at the time the Performance Goals are established, the Board will appropriately make adjustments in the method of calculating the attainment of Performance Goals for a Performance Period as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; (5) to exclude the effects of items that are “unusual” in nature or occur “infrequently” as determined under generally accepted accounting principles; (6) to exclude the dilutive effects of acquisitions or joint ventures; (7) to assume that any business divested by the Company achieved performance objectives at targeted levels during the balance of a Performance Period following such divestiture; (8) to exclude the effect of any change in the outstanding shares of Common Stock of the Company by reason of any stock dividend or split, stock repurchase, reorganization, recapitalization, merger, consolidation, spin-off, combination or exchange of shares or other similar corporate change, or any distributions to common stockholders other than regular cash dividends; (9) to exclude the effects of stock based compensation and the award of bonuses under the Company’s bonus plans; (10) to exclude costs incurred in connection with potential acquisitions or divestitures that are required to be expensed under generally accepted accounting principles; and (11) to exclude the goodwill and intangible asset impairment charges that are required to be recorded under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals and to define the manner of calculating the Performance Criteria it selects to use for such Performance Period. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Award Agreement or the written terms of a Performance Cash Award.

**(ww) “Performance Period”** means the period of time selected by the Board over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to vesting or exercise of an Award. Performance Periods may be of varying and overlapping duration, at the sole discretion of the Board.

**(xx) “Plan”** means this Scilex Holding Company 2022 Equity Incentive Plan, as amended from time to time.

(yy) “**Plan Administrator**” means the person, persons, and/or third-party administrator designated by the Company to administer the day-to-day operations of the Plan and the Company’s other equity incentive programs.

(zz) “**Post-Termination Exercise Period**” means the period following termination of a Participant’s Continuous Service within which an Option or SAR is exercisable, as specified in Section 4(h).

(aaa) “**Prior Plan**” means the Company’s 2019 Equity Incentive Plan, as amended.

(bbb) “**Restricted Stock Award**” or “**RSA**” means an Award of shares of Common Stock granted pursuant to the terms and conditions of Section 5(a).

(ccc) “**Restricted Stock Award Agreement**” means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. The Restricted Stock Award Agreement includes the Grant Notice for the Restricted Stock Award and the agreement containing the written summary of the general terms and conditions applicable to the Restricted Stock Award and which is provided to a Participant along with the Grant Notice. Each Restricted Stock Award Agreement will be subject to the terms and conditions of the Plan.

(ddd) “**Returning Shares**” means shares subject to outstanding stock awards granted under the Prior Plan and that following the Effective Date: (A) are not issued because such stock award or any portion thereof expires or otherwise terminates without all of the shares covered by such stock award having been issued; (B) are not issued because such stock award or any portion thereof is settled in cash; (C) are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares; (D) are withheld or reacquired to satisfy the exercise, strike or purchase price; or (E) are withheld or reacquired to satisfy a tax withholding obligation.

(eee) “**RSU Award**” or “**RSU**” means an Award of restricted stock units representing the right to receive an issuance of shares of Common Stock which is granted pursuant to the terms and conditions of Section 5(a).

(fff) “**RSU Award Agreement**” means a written agreement between the Company and a holder of a RSU Award evidencing the terms and conditions of a RSU Award. The RSU Award Agreement includes the Grant Notice for the RSU Award and the agreement containing the written summary of the general terms and conditions applicable to the RSU Award and which is provided to a Participant along with the Grant Notice. Each RSU Award Agreement will be subject to the terms and conditions of the Plan.

(ggg) “**Rule 16b-3**” means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(hhh) “**Rule 405**” means Rule 405 promulgated under the Securities Act.

(iii) “**Section 409A**” means Section 409A of the Code and the regulations and other guidance thereunder.

(jjj) “**Section 409A Change in Control**” means a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company’s assets, as provided in Section 409A(a)(2)(A)(v) of the Code and Treasury Regulations Section 1.409A-3(i)(5) (without regard to any alternative definition thereunder).

(kkk) “**Securities Act**” means the U.S. Securities Act of 1933, as amended.

(lll) “**Share Reserve**” means the number of shares available for issuance under the Plan as set forth in Section 2(a).

(mmm) “**Stock Appreciation Right**” or “**SAR**” means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 4.

(nnn) “**SAR Agreement**” means a written agreement between the Company and a holder of a SAR evidencing the terms and conditions of a SAR grant. The SAR Agreement includes the Grant Notice for the SAR and the agreement containing the written summary of the general terms and conditions applicable to the SAR and which is provided to a Participant along with the Grant Notice. Each SAR Agreement will be subject to the terms and conditions of the Plan.

**(ooo)** “*Subsidiary*” means, with respect to the Company, (i) any corporation of which more than 50% of the outstanding Common Stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation will have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than 50%.

**(ppp)** “*Ten Percent Stockholder*” means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate.

**(qqq)** “*Trading Policy*” means the Company’s policy permitting certain individuals to sell Company shares only during certain “window” periods and/or otherwise restricts the ability of certain individuals to transfer or encumber Company shares, as in effect from time to time.

**(rrr)** “*Unvested Non-Exempt Award*” means the portion of any Non-Exempt Award that had not vested in accordance with its terms upon or prior to the date of any Corporate Transaction.

**(sss)** “*Vested Non-Exempt Award*” means the portion of any Non-Exempt Award that had vested in accordance with its terms upon or prior to the date of a Corporate Transaction.

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**SCILEX HOLDING COMPANY  
STOCK OPTION GRANT NOTICE  
(2022 EQUITY INCENTIVE PLAN)**

Scilex Holding Company (the “**Company**”), pursuant to its 2022 Equity Incentive Plan (the “**Plan**”), has granted to you (“**Optionholder**”) an option to purchase the number of shares of the Common Stock set forth below (the “**Option**”). Your Option is subject to all of the terms and conditions as set forth herein and in the Plan and the Stock Option Agreement, all of which are attached hereto and incorporated herein in their entirety. Capitalized terms not explicitly defined herein, but defined in the Plan or the Stock Option Agreement, shall have the meanings set forth in the Plan or the Stock Option Agreement, as applicable.

Optionholder: \_\_\_\_\_

Date of Grant: \_\_\_\_\_

Vesting Commencement Date: \_\_\_\_\_

Number of Shares of Common Stock Subject to Option: \_\_\_\_\_

Exercise Price (Per Share): \_\_\_\_\_

Total Exercise Price: \_\_\_\_\_

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

**Type of Grant:** [Incentive Stock Option] OR [Nonstatutory Stock Option]

**Exercise and**

**Vesting Schedule:** Subject to the Optionholder’s Continuous Service through each applicable vesting date, the Option will vest as follows:

[\_\_\_\_\_]. Notwithstanding the foregoing, vesting shall terminate upon the Optionholder’s termination of Continuous Service.

**Optionholder Acknowledgements:** By your signature below, or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The Option is governed by this Stock Option Grant Notice, and the provisions of the Plan and the Stock Option Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Stock Option Agreement (together, the “**Option Agreement**”) may not be modified, amended or revised, except in a writing signed by you and a duly authorized officer of the Company.
- If the Option is an Incentive Stock Option, it (plus other outstanding Incentive Stock Options granted to you) cannot be first *exercisable* for more than \$100,000 in value (measured by exercise price) in any calendar year. Any excess over \$100,000 is a Nonstatutory Stock Option.
- You consent to receive this Grant Notice, the Stock Option Agreement, the Plan, the prospectus prepared for the Plan (the “**Prospectus**”) and any other Plan-related documents by electronic delivery and to participate in the Plan through an on-line or electronic system established and maintained by the Company or another third party designated by the Company.

- You have read and are familiar with the provisions of the Plan, the Stock Option Agreement, and the Prospectus. In the event of any conflict between the provisions in this Grant Notice, the Option Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The Option Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject, with the exception of other equity awards previously granted to you and any
- written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this Option.
- Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method, and any counterpart so delivered, will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

**SCILEX HOLDING COMPANY**

**OPTIONHOLDER:**

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

\_\_\_\_\_  
Signature

Title:  
Date:

Date:

**SCILEX HOLDING COMPANY  
2022 EQUITY INCENTIVE PLAN  
STOCK OPTION AGREEMENT**

As reflected by your Stock Option Grant Notice (“**Grant Notice**”) Scilex Holding Company, (the “**Company**”) has granted you an option under its 2022 Equity Incentive Plan (the “**Plan**”) to purchase a number of shares of Common Stock at the exercise price indicated in your Grant Notice (the “**Option**”). Capitalized terms not explicitly defined in this Agreement, but defined in the Grant Notice or the Plan, shall have the meanings set forth in the Grant Notice or Plan, as applicable. The terms of your Option as specified in the Grant Notice and this Stock Option Agreement constitute your Option Agreement.

The general terms and conditions applicable to your Option are as follows:

**1. GOVERNING PLAN DOCUMENT.** Your Option is subject to all the provisions of the Plan. Your Option is further subject to all interpretations, amendments, rules and regulations, which may, from time to time, be promulgated and adopted pursuant to the Plan. In the event of any conflict between the Option Agreement and the provisions of the Plan, the provisions of the Plan shall control.

**2. EXERCISE.**

(a) You may generally exercise the vested portion of your Option for whole shares of Common Stock at any time during its term by delivery of payment of the exercise price and applicable withholding taxes and other required documentation to the Plan Administrator in accordance with the exercise procedures established by the Plan Administrator, which may include an electronic submission. Please review the Plan, which may restrict or prohibit your ability to exercise your Option during certain periods.

(b) To the extent permitted by Applicable Law, you may pay your Option exercise price as follows:

(i) cash, check, bank draft or money order;

(ii) subject to Company and/or Committee consent at the time of exercise, pursuant to a “cashless exercise” program as further described in the Plan, if at the time of exercise the Common Stock is publicly traded;

(iii) subject to Company and/or Committee consent at the time of exercise, by delivery of previously owned shares of Common Stock as further described in the Plan; or

(iv) subject to Company and/or Committee consent at the time of exercise, if the Option is a Nonstatutory Stock Option, by a “net exercise” arrangement as further described in the Plan.

**3. TERM.** You may not exercise your Option before the commencement of its term or after its term expires. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

- (a) immediately upon the termination of your Continuous Service for Cause;
- (b) three months after the termination of your Continuous Service for any reason other than Cause, Disability or death;
- (c) 12 months after the termination of your Continuous Service due to your Disability;
- (d) 18 months after your death if you die during your Continuous Service;
- (e) immediately upon a Corporate Transaction if the Board has determined that the Option will terminate in connection with a Corporate Transaction,
- (f) the Expiration Date indicated in your Grant Notice; or
- (g) the day before the 10th anniversary of the Date of Grant.

Notwithstanding the foregoing, if you die during the period provided in Section 3(b) or 3(c) above, the term of your Option shall not expire until the earlier of (i) 18 months after your death, (ii) upon any termination of the Option in connection with a Corporate Transaction, (iii) the Expiration Date indicated in your Grant Notice, or (iv) the day before the 10th anniversary of the Date of Grant. Additionally, the Post-Termination Exercise Period of your Option may be extended as provided in the Plan.

To obtain the federal income tax advantages associated with an Incentive Stock Option, the Code requires that at all times beginning on the date of grant of your Option, and ending on the day three months before the date of your Option's exercise, you must be an employee of the Company or an Affiliate, except in the event of your death or Disability. If the Company provides for the extended exercisability of your Option under certain circumstances for your benefit, your Option will not necessarily be treated as an Incentive Stock Option if you exercise your Option more than three months after the date your employment terminates.

#### **4. WITHHOLDING OBLIGATIONS.**

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the "**Service Recipient**") with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account, or other tax-related items associated with the grant, vesting or exercise of the Option or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable to you (the "**Tax Liability**"), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this Option, including, but not limited to, the grant, vesting or exercise of the Option, the issuance of Common Stock pursuant to such exercise, the subsequent sale of shares of Common Stock, and the payment of any dividends on the shares; and (ii) do not commit to, and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

**(b)** Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by one or a combination of the following methods: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding from the proceeds of the sale of shares of Common Stock issued upon exercise of the Option (including by means of a “cashless exercise” pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company, or by means of the Company acting as your agent to sell sufficient shares of Common Stock for the proceeds to settle such withholding requirements, on your behalf pursuant to this authorization without further consent); (iv) withholding shares of Common Stock otherwise issuable to you upon the exercise of the Option, provided that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company’s Compensation Committee; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company or the Service Recipient, you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

**(c)** The Company may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s), in which case you may receive a refund of any over-withheld amount in cash (whether from applicable tax authorities or the Company) and you will have no entitlement to the equivalent amount in Common Stock or (ii) minimum or such other applicable rates in your jurisdiction(s), in which case, you may be solely responsible for paying any additional Tax Liability to the applicable tax authorities or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the exercised portion of the Option, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.



(d) You acknowledge that you may not be able to exercise your Option, even though the Option is vested, and that the Company shall have no obligation to issue shares of Common Stock, in each case, unless, and until you have fully satisfied any applicable Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the Option.

**5. INCENTIVE STOCK OPTION DISPOSITION REQUIREMENT.** If your option is an Incentive Stock Option, you must notify the Company in writing within 15 days after the date of any disposition of any of the shares of the Common Stock issued upon exercise of your option that occurs within two years after the date of your option grant or within one year after such shares of Common Stock are transferred upon exercise of your option.

**6. TRANSFERABILITY.** Except as otherwise provided in the Plan, your Option is not transferable, except by will or by the applicable laws of descent and distribution, and is exercisable during your life only by you.

**7. CORPORATE TRANSACTION.** Your Option is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

**8. NO LIABILITY FOR TAXES.** As a condition to accepting the Option, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the Option or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the Option, and have either done so, or knowingly and voluntarily declined to do so. Additionally, you acknowledge that the Option is exempt from Section 409A, only if the exercise price is at least equal to the “fair market value” of the Common Stock on the date of grant as determined by the Internal Revenue Service, and there is no other impermissible deferral of compensation associated with the Option. Additionally, as a condition to accepting the Option, you agree not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates in the event that the Internal Revenue Service asserts that such exercise is less than the “fair market value” of the Common Stock on the date of grant as subsequently determined by the Internal Revenue Service.

**9. OBLIGATIONS; RECOUPMENT.** You hereby acknowledge that the grant of your Option is additional consideration for any obligations (whether during or after employment) that you have to the Company not to compete, not to solicit its customers, clients or employees, not to disclose or misuse confidential information or similar obligations. Accordingly, if the Company reasonably determines that you breached such obligations, in addition to any other available remedy, the Company may, to the extent permitted by Applicable Law, recoup any income realized by you with respect to the exercise of your Option within two years of such breach. In addition, to the extent permitted by Applicable Law, this right to recoupment by the Company applies in the event that your employment is terminated for Cause, or if the Company reasonably determines that circumstances existed that it could have terminated your employment for Cause.

**10. SEVERABILITY.** If any part of this Option Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Option Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Option Agreement (or part of such a Section) so declared to be unlawful or invalid, will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible, while remaining lawful and valid.

**11. INDEBTEDNESS TO THE COMPANY.** In the event that you have any loans, draws, advances or any other indebtedness owing to the Company at the time of exercise of all or a portion of the Option, the Company may deduct and not deliver that number of shares of Common Stock with a Fair Market Value subject to the Option equal to such indebtedness to satisfy all or a portion of such indebtedness, to the extent permitted by law and in a manner consistent with Section 409A of the Code, if applicable.

**12. OTHER DOCUMENTS.** You hereby acknowledge receipt of, or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

**13. QUESTIONS.** If you have questions regarding these or any other terms and conditions applicable to your Option, including a summary of the applicable federal income tax consequences, please see the Prospectus.

\* \* \* \*

**SCILEX HOLDING COMPANY  
RSU AWARD GRANT NOTICE  
(2022 EQUITY INCENTIVE PLAN)**

Scilex Holding Company (the “*Company*”) has awarded to you (the “*Participant*”) the number of restricted stock units specified and on the terms set forth below in consideration of your services (the “*RSU Award*”). Your RSU Award is subject to all of the terms and conditions as set forth herein and in the Company’s 2022 Equity Incentive Plan (the “*Plan*”) and the Award Agreement (the “*Agreement*”), which are incorporated herein in their entirety. Capitalized terms not explicitly defined herein but defined in the Plan or the Agreement shall have the meanings set forth in the Plan or the Agreement.

Participant:

Date of Grant:

Vesting Commencement Date:

Number of Restricted Stock Units:

**Vesting Schedule:**

[\_\_\_\_\_]. Notwithstanding the foregoing, vesting shall terminate upon the Participant’s termination of Continuous Service.

**Issuance Schedule:** One share of Common Stock will be issued for each restricted stock unit, which vests at the time set forth in Section 5 of the Agreement.

**Participant Acknowledgements:** By your signature below or by electronic acceptance or authentication in a form authorized by the Company, you understand and agree that:

- The RSU Award is governed by this RSU Award Grant Notice (the “*Grant Notice*”), and the provisions of the Plan and the Agreement, all of which are made a part of this document. Unless otherwise provided in the Plan, this Grant Notice and the Agreement (together, the “*RSU Award Agreement*”) may not be modified, amended or revised except in a writing signed by you and a duly authorized officer of the Company.
- You have read and are familiar with the provisions of the Plan, the RSU Award Agreement and the prospectus prepared for the Plan (the “*Prospectus*”). In the event of any conflict between the provisions in the RSU Award Agreement, or the Prospectus and the terms of the Plan, the terms of the Plan shall control.
- The RSU Award Agreement sets forth the entire understanding between you and the Company regarding the acquisition of Common Stock and supersedes all prior oral and written agreements, promises and/or representations on that subject with the exception of: (i) other equity awards previously granted to you, and (ii) any written employment agreement, offer letter, severance agreement, written severance plan or policy, or other written agreement between the Company and you in each case that specifies the terms that should govern this RSU Award.

**SCILEX HOLDING COMPANY**

**PARTICIPANT:**

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

\_\_\_\_\_  
Signature

Title:

Date:

Date:

**SCILEX HOLDING COMPANY  
2022 EQUITY INCENTIVE PLAN  
AWARD AGREEMENT (RSU AWARD)**

As reflected by your Restricted Stock Unit Grant Notice (“*Grant Notice*”), Scilex Holding Company (the “*Company*”) has granted you a RSU Award under its 2022 Equity Incentive Plan (the “*Plan*”) for the number of restricted stock units as indicated in your Grant Notice (the “*RSU Award*”). The terms of your RSU Award as specified in this Award Agreement for your RSU Award (the “*Agreement*”) and the Grant Notice constitute your “*RSU Award Agreement*”. Defined terms not explicitly defined in this Agreement but defined in the Grant Notice or the Plan shall have the same definitions as in the Grant Notice or Plan, as applicable.

The general terms applicable to your RSU Award are as follows:

**1. GOVERNING PLAN DOCUMENT.** Your RSU Award is subject to all the provisions of the Plan. Your RSU Award is further subject to all interpretations, amendments, rules and regulations, which may, from time to time, be promulgated and adopted pursuant to the Plan. In the event of any conflict between the RSU Award Agreement and the provisions of the Plan, the provisions of the Plan shall control.

**2. GRANT OF THE RSU AWARD.** This RSU Award represents your right to be issued on a future date the number of shares of the Company’s Common Stock that is equal to the number of restricted stock units indicated in the Grant Notice subject to your satisfaction of the vesting conditions set forth therein (the “*Restricted Stock Units*”). Any additional Restricted Stock Units that become subject to the RSU Award pursuant to Capitalization Adjustments as set forth in the Plan and the provisions of Section 3 below, if any, shall be subject, in a manner determined by the Board, to the same forfeiture restrictions, restrictions on transferability, and time and manner of delivery as applicable to the other Restricted Stock Units covered by your RSU Award.

**3. DIVIDENDS.** You shall receive no benefit or adjustment to your RSU Award with respect to any cash dividend, stock dividend or other distribution that does not result from a Capitalization Adjustment as provided in the Plan; provided, however, that this sentence shall not apply with respect to any shares of Common Stock that are delivered to you in connection with your RSU Award after such shares have been delivered to you.

**4. WITHHOLDING OBLIGATIONS.**

(a) Regardless of any action taken by the Company or, if different, the Affiliate to which you provide Continuous Service (the “*Service Recipient*”) with respect to any income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items associated with the grant or vesting of the RSU Award or sale of the underlying Common Stock or other tax-related items related to your participation in the Plan and legally applicable to you (the “*Tax Liability*”), you hereby acknowledge and agree that the Tax Liability is your ultimate responsibility and may exceed the amount, if any, actually withheld by the Company or the Service Recipient. You further acknowledge that the Company and the Service Recipient (i) make no representations or undertakings regarding any Tax Liability in connection with any aspect of this RSU Award, including, but not limited to, the grant or vesting of the RSU Award, the issuance of Common Stock pursuant to such vesting, the subsequent sale of shares of Common Stock, and the payment of any dividends on the Common Stock; and (ii) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the RSU Award to reduce or eliminate your Tax Liability or achieve a particular tax result. Further, if you are subject to Tax Liability in more than one jurisdiction, you acknowledge that the Company and/or the Service Recipient (or former service recipient, as applicable) may be required to withhold or account for Tax Liability in more than one jurisdiction.

(b) Prior to any relevant taxable or tax withholding event, as applicable, you agree to make adequate arrangements satisfactory to the Company and/or the Service Recipient to satisfy all Tax Liability. As further provided in Section 8 of the Plan, you hereby authorize the Company and any applicable Service Recipient to satisfy any applicable withholding obligations with regard to the Tax Liability by any of the following means or by a combination of such means: (i) causing you to pay any portion of the Tax Liability in cash or cash equivalent in a form acceptable to the Company; (ii) withholding from any compensation otherwise payable to you by the Company or the Service Recipient; (iii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to you in connection with the Award; *provided*, however, that to the extent necessary to qualify for an exemption from application of Section 16(b) of the Exchange Act, if applicable, such share withholding procedure will be subject to the express prior approval of the Board or the Company's Compensation Committee; (iv) permitting or requiring you to enter into a "same day sale" commitment, if applicable, with a broker-dealer that is a member of the Financial Industry Regulatory Authority (a "*FINRA Dealer*"), pursuant to this authorization and without further consent, whereby you irrevocably elect to sell a portion of the shares of Common Stock to be delivered in connection with your Restricted Stock Units to satisfy the Tax Liability and whereby the FINRA Dealer irrevocably commits to forward the proceeds necessary to satisfy the Tax Liability directly to the Company or the Service Recipient; and/or (v) any other method determined by the Company to be in compliance with Applicable Law. Furthermore, you agree to pay the Company or the Service Recipient any amount the Company or the Service Recipient may be required to withhold, collect, or pay as a result of your participation in the Plan or that cannot be satisfied by the means previously described. In the event it is determined that the amount of the Tax Liability was greater than the amount withheld by the Company and/or the Service Recipient (as applicable), you agree to indemnify and hold the Company and/or the Service Recipient (as applicable) harmless from any failure by the Company or the applicable Service Recipient to withhold the proper amount.

(c) The Company may withhold or account for your Tax Liability by considering statutory withholding amounts or other withholding rates applicable in your jurisdiction(s), including (i) maximum applicable rates in your jurisdiction(s), in which case you may receive a refund of any over-withheld amount in cash (whether from applicable tax authorities or the Company) and you will have no entitlement to the equivalent amount in Common Stock or (ii) minimum or such other applicable rates in your jurisdiction(s), in which case you may be solely responsible for paying any additional Tax Liability to the applicable tax authorities or to the Company and/or the Service Recipient. If the Tax Liability withholding obligation is satisfied by withholding shares of Common Stock, for tax purposes, you are deemed to have been issued the full number of shares of Common Stock subject to the vested portion of the RSU Award, notwithstanding that a number of the shares of Common Stock is held back solely for the purpose of paying such Tax Liability.

(d) You acknowledge that you may not participate in the Plan and the Company shall have no obligation to deliver shares of Common Stock until you have fully satisfied the Tax Liability, as determined by the Company. Unless any withholding obligation for the Tax Liability is satisfied, the Company shall have no obligation to deliver to you any Common Stock in respect of the RSU Award.

**5. DATE OF ISSUANCE.** The issuance of shares in respect of the Restricted Stock Units is intended to comply with U.S. Treasury Regulations Section 1.409A-3(a) and will be construed and administered in such a manner. Subject to the satisfaction of the Tax Liability withholding obligation, if any, in the event one or more Restricted Stock Units vests, the Company shall issue to you one (1) share of Common Stock for each vested Restricted Stock Unit. Each issuance date determined by this paragraph is referred to as an “**Original Issuance Date**.” The Original Issuance Date shall be the date the underlying Restricted Stock Unit vests except that if the Original Issuance Date otherwise would fall on a date that is not a business day, the Original Issuance Date shall instead occur on the next following business day. In addition, and notwithstanding the foregoing, if:

(a) the Original Issuance Date does not occur (1) during an “open window period” applicable to you, as determined by the Company in accordance with the Company’s then-effective policy on trading in Company securities, or (2) on a date when you are otherwise permitted to sell shares of Common Stock on an established stock exchange or stock market (including but not limited to under a previously established written trading plan that meets the requirements of Rule 10b5-1 under the Exchange Act and was entered into in compliance with the Company’s policies (a “**10b5-1 Arrangement**”)); and

(b) either (1) a Tax Liability withholding obligation does not apply, or (2) the Company decides, prior to the Original Issuance Date, (A) not to satisfy the Tax Liability withholding obligation by withholding shares of Common Stock from the shares otherwise due, on the Original Issuance Date, to you under this Award, and (B) not to permit you to enter into a “same day sale” commitment with a broker-dealer (including, but not limited to, a commitment under a 10b5-1 Arrangement) and (C) not to permit you to pay your Tax Liability in cash, then the shares that would otherwise be issued to you on the Original Issuance Date will not be delivered on such Original Issuance Date and will instead be delivered on the first business day when you are not prohibited from selling shares of the Common Stock in the open public market, but in no event later than December 31 of the calendar year in which the Original Issuance Date occurs (that is, the last day of your taxable year in which the Original Issuance Date occurs), or, if and only if permitted in a manner that complies with U.S. Treasury Regulations Section 1.409A-1(b)(4), no later than the date that is the 15th day of the third calendar month of the applicable year following the year in which the shares of Common Stock under this Award are no longer subject to a “substantial risk of forfeiture” within the meaning of U.S. Treasury Regulations Section 1.409A-1(d).

**6. TRANSFERABILITY.** Except as otherwise provided in the Plan, your RSU Award is not transferable, except by will or by the applicable laws of descent and distribution

**7. CORPORATE TRANSACTION.** Your RSU Award is subject to the terms of any agreement governing a Corporate Transaction involving the Company, including, without limitation, a provision for the appointment of a stockholder representative that is authorized to act on your behalf with respect to any escrow, indemnities and any contingent consideration.

**8. NO LIABILITY FOR TAXES.** As a condition to accepting the RSU Award, you hereby (a) agree to not make any claim against the Company, or any of its Officers, Directors, Employees or Affiliates related to tax liabilities arising from the RSU Award or other Company compensation and (b) acknowledge that you were advised to consult with your own personal tax, financial and other legal advisors regarding the tax consequences of the RSU Award and have either done so or knowingly and voluntarily declined to do so.

**9. SEVERABILITY.** If any part of this Agreement or the Plan is declared by any court or governmental authority to be unlawful or invalid, such unlawfulness or invalidity will not invalidate any portion of this Agreement or the Plan not declared to be unlawful or invalid. Any Section of this Agreement (or part of such a Section) so declared to be unlawful or invalid will, if possible, be construed in a manner which will give effect to the terms of such Section or part of a Section to the fullest extent possible while remaining lawful and valid.

**10. OTHER DOCUMENTS.** You hereby acknowledge receipt of or the right to receive a document providing the information required by Rule 428(b)(1) promulgated under the Securities Act, which includes the Prospectus. In addition, you acknowledge receipt of the Company's Trading Policy.

**11. QUESTIONS.** If you have questions regarding these or any other terms and conditions applicable to your RSU Award, including a summary of the applicable federal income tax consequences please see the Prospectus.



**SCILEX HOLDING COMPANY**  
**2022 EMPLOYEE STOCK PURCHASE PLAN**  
**ADOPTED BY THE BOARD OF DIRECTORS: October 17, 2022**  
**APPROVED BY THE STOCKHOLDERS: November 9, 2022**  
**EFFECTIVE DATE: November 9, 2022**

**1. GENERAL; PURPOSE.**

(a) The Plan provides a means by which Eligible Employees of the Company and certain Designated Companies may be given an opportunity to purchase shares of Common Stock. The Plan permits the Company to grant a series of Purchase Rights to Eligible Employees under an Employee Stock Purchase Plan. In addition, the Plan permits the Company to grant a series of Purchase Rights to Eligible Employees that do not meet the requirements of an Employee Stock Purchase Plan.

(b) The Plan includes two components: a 423 Component and a Non-423 Component. The Company intends (but makes no undertaking or representation to maintain) the 423 Component to qualify as an Employee Stock Purchase Plan. The provisions of the 423 Component, accordingly, will be construed in a manner that is consistent with the requirements of Section 423 of the Code. Except as otherwise provided in the Plan or determined by the Board, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

(c) The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations.

**2. ADMINISTRATION.**

(a) The Board or the Committee will administer the Plan. References herein to the Board shall be deemed to refer to the Committee except where context dictates otherwise.

(b) The Board will have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine how and when Purchase Rights will be granted and the provisions of each Offering (which need not be identical).

(ii) To designate from time to time (A) which Related Corporations will be eligible to participate in the Plan as Designated 423 Corporations, (B) which Related Corporations or Affiliates will be eligible to participate in the Plan as Designated Non-423 Corporations, or (C) which Designated Companies will participate in each separate Offering (to the extent that the Company makes separate Offerings).

(iii) To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it deems necessary or expedient to make the Plan fully effective.

(iv) To settle all controversies regarding the Plan and Purchase Rights granted under the Plan.

(v) To suspend or terminate the Plan at any time as provided in Section 12.

(vi) To amend the Plan at any time as provided in Section 12.

(vii) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company and its Related Corporations and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan with respect to the 423 Component.

(viii) To adopt such rules, procedures and sub-plans as are necessary or appropriate to permit or facilitate participation in the Plan by Employees who are foreign nationals or employed or located outside the United States. Without limiting the generality of, and consistent with, the foregoing, the Board specifically is authorized to adopt rules, procedures, and sub-plans regarding, without limitation, eligibility to participate in the Plan, the definition of eligible “earnings,” handling and making of Contributions, establishment of bank or trust accounts to hold Contributions, payment of interest, conversion of local currency, obligations to pay payroll tax, determination of beneficiary designation requirements, withholding procedures and handling of share issuances, any of which may vary according to applicable requirements, and which, if applicable to a Designated Non-423 Corporation, do not have to comply with the requirements of Section 423 of the Code.

(c) The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee will have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board will thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. Further, to the extent not prohibited by Applicable Law, the Board or Committee may, from time to time, delegate some or all of its authority under the Plan to one or more officers of the Company or other persons or groups of persons as it deems necessary, appropriate or advisable under conditions or limitations that it may set at or after the time of the delegation. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revert in the Board some or all of the powers previously delegated. Whether or not the Board has delegated administration of the Plan to a Committee, the Board will have the final power to determine all questions of policy and expediency that may arise in the administration of the Plan.

(d) All determinations, interpretations and constructions made by the Board in good faith will not be subject to review by any person and will be final, binding and conclusive on all persons.

### **3. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.**

(a) Subject to the provisions of Section 11(a) relating to Capitalization Adjustments, the maximum number of shares of Common Stock that may be issued under the Plan will not exceed 1,462,271 shares of Common Stock, plus the number of shares of Common Stock that are automatically added on January 1st of each year for a period of up to ten years, commencing on January 1, 2023 and ending on (and including) January 1, 2032, in an amount equal to the lesser of (i) 1% of the total number of shares of Common Stock outstanding on December 31st of the preceding calendar year, (ii) 1,827,839 shares of Common Stock, and (iii) such number of shares of Common Stock determined by the Board or the Compensation Committee prior to January 1st of a given year. Notwithstanding the foregoing, the Board may act prior to the first day of any calendar year to provide that there will be no January 1st increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year will be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. For the avoidance of doubt, up to the maximum number of shares of Common Stock reserved under this Section 3(a) may be used to satisfy purchases of Common Stock under the 423 Component and any remaining portion of such maximum number of shares may be used to satisfy purchases of Common Stock under the Non-423 Component.

(b) If any Purchase Right granted under the Plan terminates without having been exercised in full, the shares of Common Stock not purchased under such Purchase Right will again become available for issuance under the Plan.

(c) The stock purchasable under the Plan will be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

#### 4. GRANT OF PURCHASE RIGHTS; OFFERING.

(a) The Board may, from time to time, grant or provide for the grant of Purchase Rights to Eligible Employees under an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering will be in such form and will contain such terms and conditions as the Board will deem appropriate, and, with respect to the 423 Component, will comply with the requirement of Section 423(b) (5) of the Code that all Employees granted Purchase Rights will have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering will include (through incorporation of the provisions of this Plan by reference in the document comprising the Offering or otherwise) the period during which the Offering will be effective, which period will not exceed 27 months beginning with the Offering Date, and the substance of the provisions contained in Sections 5 through 8, inclusive.

(b) If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in forms delivered to the Company or a third party designated by the Company (each, a “*Company Designee*”): (i) each form will apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) will be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) will be exercised.

(c) The Board will have the discretion to structure an Offering so that if the Fair Market Value of a share of Common Stock on the first Trading Day of a new Purchase Period within that Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then (i) that Offering will terminate immediately as of that first Trading Day, and (ii) the Participants in such terminated Offering will be automatically enrolled in a new Offering beginning on the first Trading Day of such new Purchase Period.

#### 5. ELIGIBILITY.

(a) Purchase Rights may be granted only to Employees of the Company or, as the Board may designate in accordance with Section 2(b), to Employees of a Related Corporation or an Affiliate. Except as provided in Section 5(b) or as required by Applicable Law, an Employee will not be eligible to be granted Purchase Rights unless, on the Offering Date, the Employee has been in the employ of the Company or the Related Corporation or an Affiliate, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event will the required period of continuous employment be equal to or greater than two years. In addition, the Board may (unless prohibited by Applicable Law) provide that no Employee will be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee’s customary employment with the Company, the Related Corporation, or the Affiliate is more than 20 hours per week and more than five months per calendar year or such other criteria as the Board may determine consistent with Section 423 of the Code with respect to the 423 Component. The Board may also exclude from participation in the Plan or any Offering Employees who are “highly compensated employees” (within the meaning of Section 423(b)(4)(D) of the Code) of the Company or a Related Corporation or a subset of such highly compensated employees.

(b) The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee will, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right will thereafter be deemed to be a part of that Offering. Such Purchase Right will have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

(i) the date on which such Purchase Right is granted will be the “Offering Date” of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

(ii) the period of the Offering with respect to such Purchase Right will begin on its Offering Date and end coincident with the end of such Offering; and

(iii) the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she will not receive any Purchase Right under that Offering.

(c) No Employee will be eligible for the grant of any Purchase Rights if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing 5% or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 5(c), the rules of Section 424(d) of the Code will apply in determining the stock ownership of any Employee, and stock that such Employee may purchase under all outstanding Purchase Rights and options will be treated as stock owned by such Employee.

(d) As specified by Section 423(b)(8) of the Code, an Eligible Employee may be granted Purchase Rights only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation to accrue at a rate which, when aggregated, exceeds US \$25,000 of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, will be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

(e) Officers of the Company and any Designated Company, if they are otherwise Eligible Employees, will be eligible to participate in Offerings under the Plan. Notwithstanding the foregoing, the Board may (unless prohibited by Applicable Law) provide in an Offering that Employees who are highly compensated Employees within the meaning of Section 423(b)(4)(D) of the Code will not be eligible to participate.

(f) Notwithstanding anything in this Section 5 to the contrary, in the case of an Offering under the Non-423 Component, an Eligible Employee (or group of Eligible Employees) may be excluded from participation in the Plan or an Offering if the Board has determined, in its sole discretion, that participation of such Eligible Employee(s) is not advisable or practical for any reason.

## **6. PURCHASE RIGHTS; PURCHASE PRICE.**

(a) On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, will be granted a Purchase Right to purchase up to that number of shares of Common Stock purchasable either with a percentage or with a maximum dollar amount, as designated by the Board, but in either case not exceeding 15% of such Employee's earnings (as defined by the Board in each Offering) during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date will be no later than the end of the Offering.

(b) The Board will establish one or more Purchase Dates during an Offering on which Purchase Rights granted for that Offering will be exercised and shares of Common Stock will be purchased in accordance with such Offering.

(c) In connection with each Offering made under the Plan, each Eligible Employee may purchase up to 10,000 shares of Common Stock (or such lesser number of shares determined by the Board prior to the commencement of the Offering) and the Board may specify (i) a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering, (ii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering and/or (iii) a maximum aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata (based on each Participant's accumulated Contributions) allocation of the shares of Common Stock (rounded down to the nearest whole share) available will be made in as nearly a uniform manner as will be practicable and equitable.

(d) The purchase price of shares of Common Stock acquired pursuant to Purchase Rights will be not less than the lesser of:

(i) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the Offering Date; or

(ii) an amount equal to 85% of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

## **7. PARTICIPATION; WITHDRAWAL; TERMINATION.**

(a) An Eligible Employee may elect to participate in an Offering and authorize payroll deductions as the means of making Contributions by completing and delivering to the Company or a Company Designee, within the time specified in the Offering, an enrollment form provided by the Company or Company Designee. The enrollment form will specify the amount of Contributions not to exceed the maximum amount specified by the Board. Each Participant's Contributions will be credited to a bookkeeping account for such Participant under the Plan and will be deposited with the general funds of the Company except where Applicable Law requires that Contributions be deposited with a third party. If permitted in the Offering, a Participant may begin such Contributions with the first payroll occurring on or after the Offering Date (or, in the case of a payroll date that occurs after the end of the prior Offering but before the Offering Date of the next new Offering, Contributions from such payroll will be included in the new Offering). If permitted in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. If required under Applicable Law or if specifically provided in the Offering, in addition to or instead of making Contributions by payroll deductions, a Participant may make Contributions through payment by cash, check or wire transfer prior to a Purchase Date.

(b) During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company or a Company Designee a withdrawal form provided by the Company. The Company may impose a deadline before a Purchase Date for withdrawing. Upon such withdrawal, such Participant's Purchase Right in that Offering will immediately terminate and the Company will distribute as soon as practicable to such Participant all of his or her accumulated but unused Contributions and such Participant's Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from that Offering will have no effect upon his or her eligibility to participate in any other Offerings under the Plan, but such Participant will be required to deliver a new enrollment form to participate in subsequent Offerings.

(c) Unless otherwise required by Applicable Law, Purchase Rights granted pursuant to any Offering under the Plan will terminate immediately if the Participant either (i) is no longer an Employee for any reason or for no reason (subject to any post-employment participation period required by Applicable Law) or (ii) is otherwise no longer eligible to participate. The Company will distribute as soon as practicable to such individual all of his or her accumulated but unused Contributions.

(d) Unless otherwise determined by the Board, a Participant whose employment transfers or whose employment terminates with an immediate rehire (with no break in service) by or between the Company and a Designated Company or between Designated Companies will not be treated as having terminated employment for purposes of participating in the Plan or an Offering; however, if a Participant transfers from an Offering under the 423 Component to an Offering under the Non-423 Component, the exercise of the Participant's Purchase Right will be qualified under the 423 Component only to the extent such exercise complies with Section 423 of the Code. If a Participant transfers from an Offering under the Non-423 Component to an Offering under the 423 Component, the exercise of the Purchase Right will remain non-qualified under the Non-423 Component. The Board may establish different and additional rules governing transfers between separate Offerings within the 423 Component and between Offerings under the 423 Component and Offerings under the Non-423 Component.

(e) During a Participant's lifetime, Purchase Rights will be exercisable only by such Participant. Purchase Rights are not transferable by a Participant, except by will, by the laws of descent and distribution, or, if permitted by the Company, by a beneficiary designation as described in Section 10.

(f) Unless otherwise specified in the Offering or as required by Applicable Law, the Company will have no obligation to pay interest on Contributions.

## **8. EXERCISE OF PURCHASE RIGHTS.**

(a) On each Purchase Date, each Participant's accumulated Contributions will be applied to the purchase of shares of Common Stock, up to the maximum number of shares of Common Stock permitted by the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares will be issued unless specifically provided for in the Offering.

(b) Unless otherwise provided in the Offering, if any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock on the final Purchase Date of an Offering, then such remaining amount will not roll over to the next Offering and will instead be distributed in full to such Participant after the final Purchase Date of such Offering without interest (unless otherwise required by Applicable Law).

(c) No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all applicable U.S. federal and state, foreign and other securities, exchange control and other laws applicable to the Plan. If on a Purchase Date the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights will be exercised on such Purchase Date, and the Purchase Date will be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in material compliance, except that the Purchase Date will in no event be more than 27 months from the Offering Date. If, on the Purchase Date, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in material compliance with all Applicable Laws, as determined by the Company in its sole discretion, no Purchase Rights will be exercised and all accumulated but unused Contributions will be distributed to the Participants without interest (unless the payment of interest is otherwise required by Applicable Law).

## **9. COVENANTS OF THE COMPANY.**

The Company will seek to obtain from each U.S. federal or state, foreign or other regulatory commission, agency or other Governmental Body having jurisdiction over the Plan such authority as may be required to grant Purchase Rights and issue and sell shares of Common Stock thereunder unless the Company determines, in its sole discretion, that doing so is not practical or would cause the Company to incur costs that are unreasonable. If, after commercially reasonable efforts, the Company is unable to obtain the authority that counsel for the Company deems necessary for the grant of Purchase Rights or the lawful issuance and sale of Common Stock under the Plan, and at a commercially reasonable cost, the Company will be relieved from any liability for failure to grant Purchase Rights and/or to issue and sell Common Stock upon exercise of such Purchase Rights.

## **10. DESIGNATION OF BENEFICIARY.**

(a) The Company may, but is not obligated to, permit a Participant to submit a form designating a beneficiary who will receive any shares of Common Stock and/or Contributions from the Participant's account under the Plan if the Participant dies before such shares and/or Contributions are delivered to the Participant. The Company may, but is not obligated to, permit the Participant to change such designation of beneficiary. Any such designation and/or change must be on a form approved by the Company.

(b) If a Participant dies, and in the absence of a valid beneficiary designation, the Company will deliver any shares of Common Stock and/or Contributions to the executor or administrator of the estate of the Participant. If no executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or Contributions, without interest (unless the payment of interest is otherwise required by Applicable Law), to the Participant's spouse, dependents or relatives, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

## **11. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.**

(a) In the event of a Capitalization Adjustment, the Board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities subject to, and the purchase price applicable to outstanding Offerings and Purchase Rights and (iv) the class(es) and number of securities that are the subject of the purchase limits under each ongoing Offering. The Board will make these adjustments, and its determination will be final, binding and conclusive.

(b) In the event of a Corporate Transaction, then: (i) any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue outstanding Purchase Rights or may substitute similar rights (including a right to acquire the same consideration paid to the stockholders in the Corporate Transaction) for outstanding Purchase Rights, or (ii) if any surviving or acquiring corporation (or its parent company) does not assume or continue such Purchase Rights or does not substitute similar rights for such Purchase Rights, then (A) the Participants' accumulated Contributions will be used to purchase shares of Common Stock (rounded down to the nearest whole share) within ten business days (or such other period specified by the Board) prior to the Corporate Transaction under the outstanding Purchase Rights, and the Purchase Rights will terminate immediately after such purchase, or (B) the Board, in its discretion, may terminate any outstanding Offerings, cancel the outstanding Purchase Rights and refund the Participants' accumulated Contributions.

## **12. AMENDMENT, TERMINATION OR SUSPENSION OF THE PLAN.**

(a) The Board may amend the Plan at any time in any respect the Board deems necessary or advisable. However, except as provided in Section 11(a) relating to Capitalization Adjustments, stockholder approval will be required for any amendment of the Plan for which stockholder approval is required by Applicable Law.

(b) The Board may suspend or terminate the Plan at any time. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

Any benefits, privileges, entitlements and obligations under any outstanding Purchase Rights granted before an amendment, suspension or termination of the Plan will not be materially impaired by any such amendment, suspension or termination except (i) with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to facilitate compliance with any laws, listing requirements, or governmental regulations (including, without limitation, the provisions of Section 423 of the Code and the regulations and other interpretive guidance issued thereunder relating to Employee Stock Purchase Plans) including without limitation any such regulations or other guidance that may be issued or amended after the date the Plan is adopted by the Board, or (iii) as necessary to obtain or maintain favorable tax, listing, or regulatory treatment. To be clear, the Board may amend outstanding Purchase Rights without a Participant's consent if such amendment is necessary to ensure that the Purchase Right and/or the Plan complies with the requirements of Section 423 of the Code with respect to the 423 Component or with respect to other Applicable Laws. Notwithstanding anything in the Plan or any Offering Document to the contrary, the Board will be entitled to: (i) establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars; (ii) permit Contributions in excess of the amount designated by a Participant in order to adjust for mistakes in the Company's processing of properly completed Contribution elections; (iii) establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Participant properly correspond with amounts withheld from the Participant's Contributions; (iv) amend any outstanding Purchase Rights or clarify any ambiguities regarding the terms of any Offering to enable the Purchase Rights to qualify under and/or comply with Section 423 of the Code with respect to the 423 Component; and (v) establish other limitations or procedures as the Board determines in its sole discretion advisable that are consistent with the Plan. The actions of the Board pursuant to this paragraph will not be considered to alter or impair any Purchase Rights granted under an Offering as they are part of the initial terms of each Offering and the Purchase Rights granted under each Offering.

## **13. TAX QUALIFICATION; TAX WITHHOLDING.**

(a) Although the Company may endeavor to (i) qualify a Purchase Right for special tax treatment under the laws of the United States or jurisdictions outside of the United States or (ii) avoid adverse tax treatment, the Company makes no representation to that effect and expressly disavows any covenant to maintain special or to avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan. The Company will be unconstrained in its corporate activities without regard to the potential negative tax impact on Participants.

(b) Each Participant will make arrangements, satisfactory to the Company and any applicable Related Corporation, to enable the Company or the Related Corporation to fulfill any withholding obligation for Tax-Related Items. Without limitation to the foregoing, in the Company's sole discretion and subject to Applicable Law, such withholding obligation may be satisfied in whole or in part by (i) withholding from the Participant's salary or any other cash payment due to the Participant from the Company or a Related Corporation; (ii) withholding from the proceeds of the sale of shares of Common Stock acquired under the Plan, either through a voluntary sale or a mandatory sale arranged by the Company; or (iii) any other method deemed acceptable by the Board. The Company shall not be required to issue any shares of Common Stock under the Plan until such obligations are satisfied.

#### 14. EFFECTIVE DATE OF PLAN.

The Plan will become effective upon the Effective Date. No Purchase Rights will be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval must be within 12 months before or after the date the Plan is adopted (or if required under Section 12(a) above, materially amended) by the Board.

#### 15. MISCELLANEOUS PROVISIONS.

(a) Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights will constitute general funds of the Company.

(b) A Participant will not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent).

(c) The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering will in any way alter the at will nature of a Participant's employment or amend a Participant's employment contract, if applicable, or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company or a Related Corporation or an Affiliate, or on the part of the Company, a Related Corporation or an Affiliate to continue the employment of a Participant.

(d) The provisions of the Plan will be governed by the laws of the State of Delaware without resort to that state's conflicts of laws rules.

(e) If any particular provision of the Plan is found to be invalid or otherwise unenforceable, such provision will not affect the other provisions of the Plan, but the Plan will be construed in all respects as if such invalid provision were omitted.

(f) If any provision of the Plan does not comply with Applicable Law, such provision shall be construed in such a manner as to comply with Applicable Law.

#### 16. DEFINITIONS.

As used in the Plan, the following definitions will apply to the capitalized terms indicated below:

(a) "**423 Component**" means the part of the Plan, which excludes the Non-423 Component, pursuant to which Purchase Rights that satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(b) "**Affiliate**" means any entity, other than a Related Corporation, whether now or subsequently established, which is at the time of determination, a "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 promulgated under the Securities Act. The Board may determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(c) "**Applicable Law**" means the Code and any applicable securities, federal, state, foreign, material local or municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, listing rule, regulation, judicial decision, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (including under the authority of any applicable self-regulating organization such as the Nasdaq Stock Market, the New York Stock Exchange or the Financial Industry Regulatory Authority).

(d) "**Board**" means the board of directors of the Company.



(e) “**Capitalization Adjustment**” means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Purchase Right after the date the Plan is adopted by the Board without the receipt of consideration by the Company through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, large nonrecurring cash dividend, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other similar equity restructuring transaction, as that term is used in Financial Accounting Standards Board Accounting Standards Codification Topic 718 (or any successor thereto). Notwithstanding the foregoing, the conversion of any convertible securities of the Company will not be treated as a Capitalization Adjustment.

(f) “**Code**” means the U.S. Internal Revenue Code of 1986, as amended, including any applicable regulations and guidance thereunder.

(g) “**Committee**” means a committee of one or more members of the Board to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) “**Common Stock**” means the common stock of the Company.

(i) “**Company**” means Scilex Holding Company, a Delaware corporation.

(j) “**Contributions**” means the payroll deductions and other additional payments specifically provided for in the Offering that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make additional payments into his or her account if specifically provided for in the Offering, and then only if the Participant has not already had the maximum permitted amount withheld during the Offering through payroll deductions. In no event may payroll deductions exceed 15% of the Participant’s base wages.

(k) “**Corporate Transaction**” means the consummation, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its subsidiaries;

(ii) a sale or other disposition of more than 50% of the outstanding securities of the Company;

(iii) a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(l) “**Designated 423 Corporation**” means any Related Corporation selected by the Board to participate in the 423 Component.

(m) “**Designated Company**” means any Designated Non-423 Corporation or Designated 423 Corporation, provided, however, that at any given time, a Related Corporation participating in the 423 Component shall not be a Related Corporation participating in the Non-423 Component.

(n) “**Designated Non-423 Corporation**” means any Related Corporation or Affiliate selected by the Board to participate in the Non-423 Component.

(o) “**Director**” means a member of the Board.

(p) “**Effective Date**” means the date as of which the Plan is adopted by the Board and approved by the stockholders of the Company in accordance with Section 14.

(q) “**Eligible Employee**” means an Employee who meets the requirements set forth in the document(s) governing the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

(r) “**Employee**” means any person, including an Officer or Director, who is “employed” for purposes of Section 423(b)(4) of the Code by the Company or a Related Corporation, or solely with respect to the Non-423 Component, an Affiliate. However, service solely as a Director, or payment of a fee for such services, will not cause a Director to be considered an “Employee” for purposes of the Plan.

(s) “**Employee Stock Purchase Plan**” means a plan that grants Purchase Rights intended to be options issued under an “employee stock purchase plan,” as that term is defined in Section 423(b) of the Code.

(t) “**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

(u) “**Fair Market Value**” means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on any established market, the Fair Market Value of a share of Common Stock will be the closing sales price for such stock as quoted on such exchange or market (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in such source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price for the Common Stock on the date of determination, then the Fair Market Value will be the closing sales price on the last preceding date for which such quotation exists.

(ii) In the absence of such markets for the Common Stock, the Fair Market Value will be determined by the Board in good faith in compliance with Applicable Laws and regulations and, to the extent applicable as determined in the sole discretion of the Board, in a manner that complies with Sections 409A of the Code.

(v) “**Governmental Body**” means any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or regulatory body, or quasi-governmental body of any nature (including any governmental division, department, administrative agency or bureau, commission, authority, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or entity and any court or other tribunal, and for the avoidance of doubt, any tax authority) or other body exercising similar powers or authority; or (d) self-regulatory organization (including the Nasdaq Stock Market, the New York Stock Exchange and the Financial Industry Regulatory Authority).

(w) “**Non-423 Component**” means the part of the Plan, which excludes the 423 Component, pursuant to which Purchase Rights that are not intended to satisfy the requirements for an Employee Stock Purchase Plan may be granted to Eligible Employees.

(x) “**Offering**” means the grant to Eligible Employees of Purchase Rights, with the exercise of those Purchase Rights automatically occurring at the end of one or more Purchase Periods. The terms and conditions of an Offering will generally be set forth in the “**Offering Document**” approved by the Board for that Offering.

(y) “**Offering Date**” means a date selected by the Board for an Offering to commence.

(z) “**Officer**” means a person who is an officer of the Company or a Related Corporation within the meaning of Section 16 of the Exchange Act.

(aa) “**Participant**” means an Eligible Employee who holds an outstanding Purchase Right.

(bb) “**Plan**” means this Scilex Holding Company 2022 Employee Stock Purchase Plan, as amended from time to time, including both the 423 Component and the Non-423 Component.

(cc) “**Purchase Date**” means one or more dates during an Offering selected by the Board on which Purchase Rights will be exercised and on which purchases of shares of Common Stock will be carried out in accordance with such Offering.

(dd) **“Purchase Period”** means a period of time specified within an Offering, generally beginning on the Offering Date or on the first Trading Day following a Purchase Date, and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

(ee) **“Purchase Right”** means an option to purchase shares of Common Stock granted pursuant to the Plan.

(ff) **“Related Corporation”** means any “parent corporation” or “subsidiary corporation” of the Company whether now or subsequently established, as those terms are defined in Sections 424(e) and (f), respectively, of the Code.

(gg) **“Securities Act”** means the U.S. Securities Act of 1933, as amended.

(hh) **“Tax-Related Items”** means any income tax, social insurance, payroll tax, fringe benefit tax, payment on account or other tax-related items arising out of or in relation to a Participant’s participation in the Plan, including, but not limited to, the exercise of a Purchase Right and the receipt of shares of Common Stock or the sale or other disposition of shares of Common Stock acquired under the Plan.

(ii) **“Trading Day”** means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including but not limited to the NYSE, Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or any successors thereto, is open for trading.

November 17, 2022

Office of the Chief Accountant  
Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549

Ladies and Gentlemen:

We have read Scilex Holding Company (formerly known as Vickers Vantage Corp I.) statements included under Item 4.01 of its Form 8-K dated November 10, 2022. We agree with the statements concerning our Firm under Item 4.01, in which we were informed of our dismissal on November 10, 2022. We are not in a position to agree or disagree with other statements contained therein.

Very truly yours,

/s/ WithumSmith+Brown, PC

New York, New York

## Subsidiaries of Scilex Holding Company

Name	State or Jurisdiction of Incorporation or Organization
Scilex, Inc.	Delaware
Scilex Pharmaceuticals Inc.	Delaware
Semnur Pharmaceuticals, Inc.	Delaware

**Scilex Holding Company, a majority-owned subsidiary of Sorrento Therapeutics, Inc. (Nasdaq: SRNE, “Sorrento”), and Vickers Vantage Corp. I Announce the Closing of their Previously Announced Business Combination**

- Approximately 80% of the shareholders of Vickers present at the meeting of Vickers shareholders in connection with the business combination voted in favor of the business combination.
- Scilex’s shares of common stock and warrants are expected to begin trading on the Nasdaq Capital Market on November 11, 2022 under the ticker symbols “SCLX” and “SCLXW,” respectively
- Sorrento owns over 96% of Scilex

**PALO ALTO and NEW YORK, November 10, 2022 /Newswire/** — Scilex Holding Company (Nasdaq: SCLX and SCLXW), a majority-owned subsidiary of Sorrento Therapeutics, Inc. (Nasdaq: SRNE, “Sorrento”), an innovative revenue-generating company focused on acquiring, developing and commercializing non-opioid pain management products for the treatment of acute and chronic pain and Vickers Vantage Corp. I, a special purpose acquisition company, today announced the closing of their previously announced business combination (the “Business Combination”).

The Business Combination was approved by Vickers’s shareholders at its Extraordinary General Meeting held on November 9, 2022 (the “Meeting”), along with all other proposals presented at the Meeting including a proposal to redomesticate Vickers prior to the Business Combination from the Cayman Islands to Delaware. The combined company will operate as “Scilex Holding Company” on November 11, 2022, its shares of common stock and warrants are expected to begin trading on the Nasdaq Capital Market under the ticker symbols “SCLX” and “SCLXW,” respectively.

“Scilex is entering an exciting phase as the resources of the public capital markets will be available to enhance our business growth and enable us to continue to fulfill our mission to address patient pain management needs”, said Henry Ji, Ph.D., Executive Chairman of Scilex and Chairman and Chief Executive Officer of Sorrento. “With Scilex on its way to becoming a publicly-traded entity, our unique model continues to demonstrate the multiple ways in which we are generating value at Sorrento, including equity stakes in public and private entities, royalties and milestone payments due to us from certain proprietary products, pharma collaborations worldwide to advance core programs, and most importantly, our rapidly progressing and advanced wholly-owned pipeline which we see as our major value driver going forward. We appreciate our partnership with the team at Vickers as we prepare for this next chapter.”

“Our Scilex team and I are proud to continue our leadership in the creation of prescription non-opioid therapeutics addressing acute and chronic pain,” said Jaisim Shah, President and Chief Executive Officer of Scilex. “As a public company, we aim to accelerate our mission to increase access to prescription non-opioid therapeutics by further commercializing our two FDA-authorized non-opioid pain management products, expanding public and private payer adoption, and advancing our pipeline of innovative opioid sparing products. We are grateful to all of our investors for supporting us through our successful transition.”

### **About Scilex Holding Company**

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Scilex Holding Company is headquartered in Palo Alto, California, with operations in both Palo Alto and San Diego, California. For further information please visit [www.scilexholding.com](http://www.scilexholding.com).

### **About Sorrento Therapeutics, Inc.**

Sorrento is a clinical and commercial stage biopharmaceutical company developing new therapies to treat cancer, pain (non-opioid treatments), autoimmune disease and COVID-19. Sorrento's multimodal, multipronged approach to fighting cancer is made possible by its extensive immuno-oncology platforms, including key assets such as next-generation tyrosine kinase inhibitors ("TKIs"), fully human antibodies ("G-MAB™ library"), immuno-cellular therapies ("DAR-T™"), antibody-drug conjugates ("ADCs"), and oncolytic virus ("Seprehvec™"). Sorrento is also developing potential antiviral therapies and vaccines against coronaviruses, including STI-1558, COVISHIELD™ and COVIDROPS™; and diagnostic test solutions, including COVIMARK™.

Sorrento's commitment to life-enhancing therapies for patients is also demonstrated by our effort to advance (TRPV1 agonist) non-opioid pain management small molecule, resiniferatoxin ("RTX"), and SP-102 (10 mg, dexamethasone sodium phosphate viscous gel) (SEMDEXA™), a novel, viscous gel formulation of a widely used corticosteroid for epidural injections to treat lumbosacral radicular pain, or sciatica, and to commercialize ZTlido® (lidocaine topical system) 1.8% for the treatment of postherpetic neuralgia (PHN). RTX has been cleared for a Phase II trial for intractable pain associated with cancer and a Phase II trial in osteoarthritis patients. Positive final results from the Phase III Pivotal Trial C.L.E.A.R. Program for SEMDEXA™, its novel, non-opioid product for the treatment of lumbosacral radicular pain (sciatica), were announced in March 2022. ZTlido® was approved by the FDA on February 28, 2018.

For more information [visit www.sorrentotherapeutics.com](http://www.sorrentotherapeutics.com).

### **About Vickers Vantage Corp. I**

Prior to the consummation of the Business Combination, Vickers Vantage Corp. I was a blank check company formed for the purpose of effecting a merger, share exchange, asset acquisition, share purchase, reorganization or similar business combination with one or more businesses or entities.

### **Forward-Looking Statements**

This press release and any statements made for and during any presentation or meeting concerning the matters discussed in this press release contain forward-looking statements related to Vickers, Sorrento and its subsidiaries, including but not limited to Scilex, under the safe harbor provisions of Section 21E of the Private Securities Litigation Reform Act of 1995 and are subject to risks and uncertainties that could cause actual results to differ materially from those projected. Forward-looking statements include statements regarding Scilex's long-term objectives and commercialization plans, Scilex's potential to attract new capital and avoid the effects of negative debt leverage, the estimated or anticipated future results and benefits of the combined company following the Business Combination, future opportunities for the combined company, the combined company's future business strategies, the expected cash resources of the combined company and the expected uses thereof; Scilex's current and prospective product candidates, planned clinical trials and preclinical activities and potential product approvals, as well as the potential for market acceptance of any approved products and the related market opportunity; statements regarding SP-102 (SEMDEXA™), SP-103 or SP-104, if approved by the FDA; Scilex's development and commercialization plans; and Sorrento's products, technologies and prospects and Scilex's products, technologies and prospects.



Risks and uncertainties that could cause Sorrento's and Scilex's actual results to differ materially and adversely from those expressed in our forward-looking statements, include, but are not limited to: the ability of the combined company to achieve the benefits of the Business Combination, including future financial and operating results of the combined company; risks related to the outcome of any legal proceedings that may be instituted against the parties regarding the Business Combination; general economic, political and business conditions; risks related to the ongoing COVID-19 pandemic; the risk that the potential product candidates that Scilex develops may not progress through clinical development or receive required regulatory approvals within expected timelines or at all; risks relating to uncertainty regarding the regulatory pathway for Scilex's product candidates; the risk that Scilex will be unable to successfully market or gain market acceptance of its product candidates; the risk that Scilex's product candidates may not be beneficial to patients or successfully commercialized; the risk that Scilex has overestimated the size of the target patient population, their willingness to try new therapies and the willingness of physicians to prescribe these therapies; risks that the results of the Phase 2 trial for SP-103 or Phase 1 trials for SP-104 may not be successful; risks that the prior results of the clinical trials of SP-102 (SEMDEXA™), SP-103 or SP-104 may not be replicated; regulatory and intellectual property risks; the risk of failure to realize the anticipated benefits of the Business Combination and other risks and uncertainties indicated from time to time and other risks set forth in Sorrento's and Vickers's filings with the SEC, including in Vickers's final prospectus relating to the Business Combination dated October 28, 2022. Investors are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this release, and we undertake no obligation to update any forward-looking statement in this press release except as may be required by law.

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For Vickers Vantage Corp. I

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SEMDEXA™ (SP-102) is a trademark owned by Semnur Pharmaceuticals, Inc., a wholly-owned subsidiary of Scilex Holding Company. A proprietary name review by the FDA is planned.

ZTlido® is a registered trademark owned by Scilex Pharmaceuticals Inc., a wholly-owned subsidiary of Scilex Holding Company.

Gloperba® is an exclusive, transferable license to use the trademark by Scilex Holding Company.

All other trademarks are the property of their respective owners.

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**Scilex Holding Company, a majority-owned subsidiary of Sorrento Therapeutics, Inc. (Nasdaq: SRNE, “Sorrento”), Debuts on Nasdaq Under Ticker “SCLX”**

**Scilex Holding Company to Ring the Nasdaq Opening Bell on Friday November 11, 2022 at 9:30 a.m. ET**

- Scilex plans to accelerate growth as a public company and advance further its non-opioid pain management therapeutic portfolio to transform the acute and chronic pain outpatient market
- Scilex will ring the Nasdaq opening bell at 9:30 a.m. ET on Friday November 11, 2022. Watch the ceremony live on Nasdaq’s [livestream](#)

**PALO ALTO, November 10, 2022 /Newswire/** — Scilex Holding Company (“Scilex”), a majority-owned subsidiary of Sorrento Therapeutics, Inc. (Nasdaq: SRNE, “Sorrento”), an innovative revenue-generating company focused on acquiring, developing and commercializing non-opioid pain management products for the treatment of acute and chronic pain, announced that shares of its common stock will trade on the Nasdaq Capital Market on Friday November 11, 2022 under the ticker symbol “SCLX”. Scilex’s trading debut comes after the completion of its business combination with Vickers Vantage Corp. I, a special purpose acquisition company (the “Business Combination”). The combined company now operates as Scilex Holding Company.

Scilex Holding Company is uncompromising in its focus to become the global pain management leader committed to social, environmental, economic, and ethical principles to responsibly develop pharmaceutical products to maximize quality of life.

Henry Ji, Ph.D., Executive Chairman of Scilex and Chairman and Chief Executive Officer of Sorrento and Jaisim Shah, President and Chief Executive Officer of Scilex, will lead the ceremony alongside other members of Scilex’s executive team, and Scilex and Sorrento board members. “This is an extremely exciting moment for the Scilex team. Ringing the opening bell at Nasdaq is indicative of our team’s hard work and celebration of our continued growth”, said Henry Ji, Ph.D.. “I am confident and excited for Scilex’s future growth and journey ahead.”

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**SCILEX HOLDING COMPANY AND SUBSIDIARIES**

**UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

*September 30, 2022*



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**SCILEX HOLDING COMPANY**

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In connection with the business combination with Vickers Vantage Corp. I (as more fully described in the notes to these financial statements), Scilex Holding Company was renamed Scilex, Inc. These financial statements are those of Scilex Holding Company (now known as Scilex, Inc.) prior to the completion of such business combination.

**SCILEX HOLDING COMPANY**  
**CONSOLIDATED BALANCE SHEETS**  
**AS OF SEPTEMBER 30, 2022 AND DECEMBER 31, 2021**  
(In thousands, except for par value and share amounts; unaudited)

	September 30, 2022	December 31, 2021
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 2,483	\$ 4,338
Accounts receivable, net	17,474	14,268
Inventory	933	2,562
Prepaid expenses and other	10,583	1,835
<b>Total current assets:</b>	<b>31,473</b>	<b>23,003</b>
Property and equipment, net	782	805
Operating lease right-of-use asset	1,271	1,303
Intangibles, net	41,617	38,802
Goodwill	13,481	13,481
Long-term deposit	153	538
<b>Total assets</b>	<b>\$ 88,777</b>	<b>\$ 77,932</b>
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 11,684	\$ 4,284
Accrued payroll	1,426	3,733
Accrued expenses	23,862	10,621
Current portion of deferred consideration	133	—
Current portion of debt	—	37,950
Related party payable	166,145	92,724
Related party note payable	47,108	19,608
Current portion of operating lease liabilities	717	500
<b>Total current liabilities:</b>	<b>251,075</b>	<b>169,420</b>
Long-term deferred consideration	3,517	—
Long-term debt, net	—	72,037
Related party note payable, net	62,717	23,503
Derivative liabilities	—	35,700
Operating lease liabilities	863	1,148
<b>Total liabilities</b>	<b>\$ 318,172</b>	<b>\$ 301,808</b>
<b>Commitments and contingencies (See Note 8)</b>		
<b>Stockholders' Deficit:</b>		
Preferred stock, \$0.0001 par value, 20,000,000 shares authorized; none issued or outstanding at September 30, 2022 and December 31, 2021	—	—
Common stock, \$0.0001 par value, 350,000,000 shares authorized; 197,566,338 and 197,266,338 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	20	20
Additional paid-in capital	128,615	128,654
Accumulated deficit	(358,030)	(352,550)
<b>Total stockholders' deficit</b>	<b>(229,395)</b>	<b>(223,876)</b>
<b>Total liabilities and stockholders' deficit</b>	<b>\$ 88,777</b>	<b>\$ 77,932</b>

See accompanying notes to unaudited consolidated financial statements

**SCILEX HOLDING COMPANY**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2022 AND 2021**  
(In thousands, except for net loss per share amounts; unaudited)

	<u>Nine Months Ended September 30,</u>	
	<u>2022</u>	<u>2021</u>
<b>Net revenue</b>	\$ 26,115	\$ 23,054
<b>Operating costs and expenses:</b>		
Cost of revenue	6,284	2,549
Research and development	6,457	7,031
Selling, general and administrative	41,371	36,092
Intangible amortization	2,896	2,803
<b>Total operating costs and expenses</b>	<u>57,008</u>	<u>48,475</u>
<b>Loss from operations</b>	(30,893)	(25,421)
<b>Other (income) expense:</b>		
Gain on derivative liability	(5,300)	(100)
(Gain) loss on debt extinguishment, net	(28,634)	12,463
Interest expense	8,596	8,617
(Gain) loss on foreign currency exchange	(39)	48
<b>Total other (income) expense</b>	<u>(25,377)</u>	<u>21,028</u>
<b>Loss before income taxes</b>	(5,516)	(46,449)
Income tax (benefit) expense	(36)	10
<b>Net loss</b>	<u>\$ (5,480)</u>	<u>\$ (46,459)</u>
Net loss per share – basic and diluted	\$ (0.03)	\$ (0.24)
Weighted average number of shares during the period—basic and diluted	197,550	197,266

See accompanying notes to unaudited consolidated financial statements

**SCILEX HOLDING COMPANY**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' DEFICIT**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2022 AND 2021**  
(In thousands; unaudited)

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
<b>Balance, December 31, 2021</b>	197,266	\$ 20	\$128,654	\$ (352,550)	\$(223,876)
Stock options exercised	300	—	96	—	96
Aardvark SP-104 license transfer from Sorrento, net of discount	—	—	(4,127)	—	(4,127)
Aardvark SP-104 discount amortization	—	—	(35)	—	(35)
Stock based compensation	—	—	4,027	—	4,027
Net loss	—	—	—	(5,480)	(5,480)
<b>Balance, September 30, 2022</b>	<u>197,566</u>	<u>\$ 20</u>	<u>\$128,615</u>	<u>\$ (358,030)</u>	<u>\$(229,395)</u>

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total
	Shares	Amount			
<b>Balance, December 31, 2020</b>	197,266	\$ 20	\$ 122,423	\$ (264,126)	\$(141,683)
Stock-based compensation	—	—	4,368	—	4,368
Adjustment to shares issued in Semnur Acquisition	—	—	409	—	409
Net loss	—	—	—	(46,459)	(46,459)
<b>Balance, September 30, 2021</b>	<u>197,266</u>	<u>\$ 20</u>	<u>20\$127,200</u>	<u>\$ (310,585)</u>	<u>\$(183,365)</u>

See accompanying notes to unaudited consolidated financial statements

**SCILEX HOLDING COMPANY**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2022 AND 2021**  
(In thousands; Unaudited)

	Nine Months Ended September 30,	
	2022	2021
<b>Operating activities</b>		
Net loss	\$ (5,480)	\$(46,459)
Adjustments to reconcile net loss to net cash used for operating activities:		
Depreciation and amortization	2,926	2,832
Amortization of debt issuance costs and debt discount	3,108	5,904
Payment on the Scilex Pharma Notes attributed to accreted interest related to the debt discount	(21,190)	(11,813)
(Gain) loss on debt extinguishment, net	(28,634)	12,463
Non-cash operating lease cost	351	276
Stock-based compensation	4,027	4,368
Gain on derivative liability	(5,300)	(100)
Changes in operating assets and liabilities:		
Accounts receivables, net	(3,206)	517
Inventory	1,629	186
Prepaid expenses and other	(3,478)	(1,647)
Long-term deposits	385	—
Accounts payable	2,967	(2,784)
Accrued payroll	(2,307)	360
Accrued expenses	12,403	(522)
Other liabilities	(255)	(53)
Related party payable	21,521	13,765
<b>Net cash used for operating activities</b>	<b>(20,533)</b>	<b>(22,707)</b>
<b>Investing activities</b>		
Acquisition consideration paid in cash for Romeg intangible asset acquisition	(2,060)	—
Purchase of property, plant, and equipment	(7)	—
<b>Net cash used for investing activities</b>	<b>(2,067)</b>	<b>—</b>
<b>Financing activities</b>		
Repayment of principal on the Scilex Pharma Notes	(84,808)	(32,376)
Repayment on other loans	(18,800)	(36,900)
Proceeds from other loans	9,857	34,799
Proceeds from stock options exercised	96	—
Proceeds from related party payable	51,900	45,050
Proceeds from related party note payable	62,500	11,500
<b>Net cash provided by financing activities</b>	<b>20,745</b>	<b>22,073</b>
<b>Net change in cash and cash equivalents</b>	<b>(1,855)</b>	<b>(634)</b>
<b>Cash and cash equivalents at beginning of period</b>	<b>4,338</b>	<b>4,839</b>
<b>Cash and cash equivalents at end of period</b>	<b>\$ 2,483</b>	<b>\$ 4,205</b>
<b>Supplemental disclosures:</b>		
<b>Supplemental disclosures of non-cash investing and financing activities</b>		
Deferred consideration for Romeg intangible asset acquisition	\$ 3,650	\$ —
Non-cash consideration in Semnur acquisition	—	409
Other loan forgiveness	—	1,536
Promissory Note issued to Sorrento in exchange for the SP-104 license, net of discount	4,162	—
Fair value adjustment to derivative liability in troubled debt restructuring	30,400	—
Live Action right-of-use asset in Palo Alto	320	—

See accompanying notes to unaudited consolidated financial statement

**SCILEX HOLDING COMPANY**  
**NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS**

**1. Nature of Operations and Basis of Presentation**

*Organization and Principal Activities*

Scilex Holding Company (“Scilex Holding” (now known as Scilex, Inc.) and together with its wholly owned subsidiaries, the “Company”) was incorporated in Delaware in February 2019 and is a majority-owned subsidiary of Sorrento Therapeutics, Inc. (Nasdaq: SRNE, “Sorrento”). The Company is a commercial biopharmaceutical company focused on acquiring, developing and commercializing non-opioid management products for the treatment of acute and chronic pain. The Company launched its first commercial product in October 2018, ZTlido (lidocaine topical system) 1.8% (“ZTlido”), a prescription lidocaine topical system that is designed with novel technology to address the limitations of current prescription lidocaine therapies by providing significantly improved adhesion and continuous pain relief throughout the 12-hour administration period. The Company in-licensed the exclusive right to commercialize GLOPERBA (colchicine USP) oral solution, an FDA-approved prophylactic treatment for painful gout flares in adults, in the U.S. (see Note 2). The Company is planning to commercialize GLOPERBA in 2023. The Company is currently developing three product candidates, SP-102 (10 mg, dexamethasone sodium phosphate viscous gel), a Phase 3, novel, viscous gel formulation of a widely used corticosteroid for epidural injections to treat lumbosacral radicular pain, or sciatica (“SP-102” or “SEMDEXA”) and SP-103 (lidocaine topical system) 5.4% (“SP-103”), for the treatment of acute low back pain, and SP-104 (4.5 mg, low-dose naltrexone hydrochloride delayed-release capsules) (“SP-104”), a novel formulation for the treatment of fibromyalgia.

On March 18, 2019, the Company entered into a Contribution and Loan Agreement with Sorrento and the holders of the outstanding shares of capital stock of Scilex Pharmaceuticals Inc. (“Scilex Pharma”) pursuant to which the Company acquired 100% of the outstanding shares of capital stock of Scilex Pharma in exchange for shares of the Company’s common stock (the “Contribution”), which was accounted for as a reorganization of entities under common control. Pursuant to the Contribution and Loan Agreement, Sorrento provided the Company with a loan with an initial principal amount of \$16.5 million in the form of a note payable, which was used by the Company to fund the acquisition of Semnur Pharmaceuticals, Inc. (“Semnur”). Concurrently therewith, the Company entered into an Agreement and Plan of Merger with Semnur, Sigma Merger Sub, Inc., the Company’s prior wholly-owned subsidiary (“Merger Sub”), Fortis Advisors LLC, solely as representative of the holders of Semnur equity (the “Semnur Equityholders’ Representative”), and Sorrento, for limited purposes (the “Merger Agreement”), which was accounted for as an asset acquisition. Pursuant to the Merger Agreement, Merger Sub merged with and into Semnur (the “Merger of Semnur”), with Semnur surviving as the Company’s wholly-owned subsidiary. As a result of the Contribution and the Merger of Semnur, Scilex Pharma and Semnur became wholly-owned subsidiaries of the Company. Upon completion of the Contribution and the Merger of Semnur, the historical consolidated financial statements of Scilex Pharma became the historical consolidated financial statements of Scilex Holding.

Since inception, the Company had devoted substantially all of its efforts to the product development of SP-102 and SP-103 and the commercialization of ZTlido.

*Business Combination*

On March 17, 2022, the Company entered into an Agreement and Plan of Merger (as amended on September 12, 2022, the “BCA”) with Vickers Vantage Corp. I (“Vickers”), a special purpose acquisition company, and Vantage Merger Sub, Inc., a wholly-owned subsidiary of Vickers (“Vickers Merger Sub”). Pursuant to the terms of the BCA, Vickers Merger Sub merged with and into the Company, with the Company surviving the merger (“Legacy Scilex”) and becoming a wholly-owned subsidiary of Vickers (collectively, the “Business Combination”).

On November 10, 2022, Vickers consummated the Business Combination pursuant to the terms of the BCA. Vickers acquired all of the outstanding equity interests of Legacy Scilex. As a result of the Business Combination, New Scilex (as defined below) received gross proceeds of approximately \$12.0 million, prior to the settlement of transaction-related costs and expenses. Additionally, all existing related party indebtedness between the Company, Scilex Pharma, and Sorrento totaling \$290.6 million was converted into equity interests in Vickers in connection with the consummation of the Business Combination and pursuant to the terms of the Debt Exchange Agreement (see Note 10). In connection with the Business Combination (as more fully described in the notes to these financial statements), Scilex Holding Company was renamed to Scilex, Inc. These financial statements are those of Scilex Holding Company (now known as Scilex, Inc.) prior to the completion of such Business Combination. Additionally, in connection with the completion of the Business Combination, Vickers was renamed to, and will operate as, “Scilex Holding Company” and the Company began trading on the Nasdaq Capital Market under the new ticker symbol “SCLX” on November 11, 2022. Scilex Holding Company following the completion of the Business Combination is sometimes referred to herein as “New Scilex.”

The Business Combination will be accounted for as a reverse recapitalization in accordance with U.S. GAAP. Under this method of accounting, Vickers is treated as the “acquired” company for accounting purposes and the Business Combination is treated as the equivalent of the Company issuing stock for the net assets of Vickers, accompanied by a recapitalization. The net assets of Vickers are stated at historical cost, with no goodwill or other intangible assets recorded.

The Company’s legal, accounting and other fees directly attributable to the Business Combination were capitalized within prepaid expenses and other current assets on the consolidated balance sheets. As of September 30, 2022, the Company had capitalized \$7.3 million of costs incurred in relation to the Business Combination. There were no capitalized costs in relation to the Business Combination as of December 31, 2021.

#### *Basis of Presentation*

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”) and include all adjustments necessary for the fair presentation of the Company’s financial position for the periods presented.

The accompanying consolidated financial statements include the accounts of the Company’s subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

These consolidated financial statements should be read in conjunction with the consolidated financial statements for the fiscal year ended December 31, 2021. Operating results for quarter periods are not expected to be indicative of operating results for the Company’s 2022 fiscal year, or any subsequent period.

#### *Use of Estimates*

The preparation of these consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of these consolidated financial statements and the reported amounts of expenses during the reporting period. Management believes that these estimates are reasonable; however, actual results may differ from these estimates.

#### *Significant Accounting Policies*

During the nine months ended September 30, 2022, there have been no changes to the Company’s significant accounting policies as described in the notes to the audited financial statements for the years ended December 31, 2021 and 2020 included in the proxy statement/prospectus filed by Vickers with the SEC on October 28, 2022 beginning on page F-48 thereof.

## **Segments**

Operating segments are identified as components of an entity where separate discrete financial information is available for evaluation by the chief operating decision maker in making decisions on how to allocate resources and assesses performance. The Company has determined that its chief operating decision maker is its Chief Executive Officer, as he is responsible for making decisions regarding the allocation of resources and assessing performance as well as for strategic operational decisions. The Company is engaged primarily in the development of non-opioid products focused on pain management based on its platform technologies and all sales are based in the United States. Accordingly, the Company has determined that it operates its business as a single reportable segment.

## **2. Liquidity and Going Concern**

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and satisfaction of liabilities in the normal course of business. Management has assessed the Company's ability to continue as a going concern for at least one year after the date the financial statements are issued.

As of September 30, 2022, the Company's negative working capital was \$219.6 million, including cash and cash equivalents of approximately \$2.5 million. During the nine months ended September 30, 2022, the Company had operating losses of \$30.9 million and cash flows used for operations of \$20.5 million. The Company had an accumulated deficit of approximately \$358.0 million as of September 30, 2022.

In September 2022, the Company exercised the Early Paydown Provision to fully extinguish the Scilex Pharma Notes (see Note 6). In August 2022 and September 2022, the Company made principal payments towards the outstanding Scilex Pharma Notes totaling \$41.4 million. Pursuant to Amendment No. 4, a principal balance of \$28.0 million was forgiven by the Scilex Pharma Note Purchasers (see Note 6) upon the Company's exercise of the Early Paydown Provision. The Company funded the principal payments with cash-on hand and \$34.0 million received from Sorrento on September 28, 2022 (see Note 10).

On September 12, 2022, the Company and Scilex Pharma entered into a Debt Exchange Agreement with Sorrento, pursuant to which all related party payables and related party note payables that remain outstanding as of immediately prior to, and contingent upon, the closing of the Business Combination were contributed by Sorrento to the Company in exchange for the issuance by the Company to Sorrento of preferred stock of the Company and such shares were subsequently converted into shares of New Scilex common stock and preferred stock (see Note 10).

On October 17, 2022, Sorrento and Scilex entered into a Funding Commitment Letter (see Note 10). Pursuant to the terms of the Funding Commitment Letter, upon the written request of the Company, Sorrento shall fund one or more loans to the Company in the amount to achieve \$5,000,001 in net tangible assets immediately following the effective time of the Business Combination. Such related party payables or related party note payables will be converted into shares of preferred stock pursuant to the Debt Exchange Agreement. Any loans made under the Funding Commitment Letter will not exceed the lesser of (a) \$10,000,000 and (b) an amount that, when taken together with all other Outstanding Indebtedness, will result in the Aggregate Outstanding Amount equaling \$310,000,000 (see Note 10). The Company did not draw funds from the Funding Commitment Letter at the effective time of the Business Combination.

On March 18, 2019, the Company acquired Semnur and the acquisition was accounted for as an asset acquisition (see Note 3). The Company anticipates the cash needed for the development of Semnur's primary product candidate in development, SP-102, as well in the development of SP-103, will be in excess of the Company's cash available within one year after the date these consolidated financial statements are issued. Semnur has no historical revenue and the Company will be responsible for funding all development and commercialization efforts and capital funding needs possibly through private or public equity or debt financings, strategic collaborations or other arrangements.



On May 12, 2022, the Company entered into a Bill of Sale (see Note 3), with Sorrento to acquire rights, title and interest in the SP-104 Assets (see Note 3). SP-104 has not been approved for commercialization and, as such, no revenues have been generated to date by the asset. The Company will be responsible for funding all development and commercialization efforts.

On June 14, 2022, the Company entered into a license and commercialization agreement with Romeg (see Note 3). The transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in the single asset, acquired licenses. The Company anticipates incurring costs related to the commercial launch and marketing of the acquired licenses.

The Company has plans to obtain additional resources to fund its currently planned operations and expenditures for at least twelve months from the issuance of these consolidated financial statements through a combination of equity offerings, debt financings, collaborations, government contracts or other strategic transactions. The Company's plans are also dependent upon the success of future sales of ZTlido, which is still in the early stages of commercialization, and are dependent upon, among other things, the success of the Company's marketing of ZTlido. Should the Company's sales of ZTlido not materialize at the expected rate contemplated in the Company's business plan, due to the COVID-19 pandemic or other factors, the Company believes that there are a number of ongoing and potential actions that would maintain its projected cash and projected financial position including but not limited to, additional reductions in general and administrative costs, sales and marketing costs, suspension or winding down of clinical development programs for SP-102, SP-103, and SP-104, and other discretionary costs. Although the Company believes such plans, if executed, should provide the Company with financing to meet its needs, successful completion of such plans is dependent on factors outside the Company's control. As such, management cannot conclude that such plans will be effectively implemented within one year after the date that these consolidated financial statements are issued. As a result, management has concluded that the aforementioned conditions, among other things, raise substantial doubt about the Company's ability to continue as a going concern for one year after the date the financial statements are issued.

### **3. Acquisitions**

#### *Semnur Acquisition*

On March 18, 2019, the Company completed the Merger of Semnur. At the closing of the Merger of Semnur, the Company issued to the holders of Semnur's capital stock and options to purchase Semnur's common stock, upfront consideration with a value of \$70.0 million. The upfront consideration was comprised of the following: (a) a cash payment of approximately \$15.0 million, and (b) \$55.0 million of shares of the Company's common stock (47,039,315 shares issued and 352,972 shares issuable, valued at \$1.16 per share) (the "Stock Consideration"). Following the issuance of the Stock Consideration, Sorrento ownership in the Company diluted to approximately 58% of the Company's issued and outstanding capital stock.

Pursuant to the Merger Agreement, and upon the terms and subject to the conditions contained therein, the Company also agreed to pay the holders of Semnur equity (the "Semnur Equityholders") up to \$280.0 million in aggregate contingent cash consideration based on the achievement of certain milestones, comprised of a \$40.0 million payment that will be due upon obtaining the first approval of a New Drug Application ("NDA") of a Semnur product by the U.S. Food and Drug Administration (the "FDA") and additional payments that will be due upon the achievement of certain amounts of net sales of Semnur products, as follows: (1) a \$20.0 million payment upon the achievement of \$100.0 million in cumulative net sales of a Semnur product, (2) a \$20.0 million payment upon the achievement of \$250.0 million in cumulative net sales of a Semnur product, (3) a \$50.0 million payment upon the achievement of \$500.0 million in cumulative net sales of a Semnur product, and (4) a \$150.0 million payment upon the achievement of \$750.0 million in cumulative net sales of a Semnur product.

On August 7, 2019, the Company entered into an amendment to the Merger Agreement to provide that, following the consummation of the Company's first bona fide equity financing with one or more third-party financing sources on an arms' length basis with gross proceeds to the Company of at least \$40.0 million, certain of the former Semnur optionholders will be paid cash in lieu of: (1) the 352,972 shares of the Company's common stock otherwise issuable to such former Semnur optionholders pursuant to the Merger Agreement, and (2) any shares that would otherwise be issued to such former Semnur optionholders upon release of shares held in escrow pursuant to the Merger Agreement, with such shares in each case valued at \$1.16 per share. The amendment resulted in a reclassification of \$0.4 million from additional paid-in capital to accrued liabilities.

In March 2019, the Semnur Equityholders that received the Stock Consideration were required to sign an Exchange and Registration Rights Agreement with the Company (the "Exchange Agreement"). Pursuant to the Exchange Agreement, and upon the terms and subject to the conditions contained therein, if within 18 months following the closing of the Merger, 100% of the outstanding equity of the Company has not been acquired by a third party or the Company has not entered into a definitive agreement with respect to, or otherwise consummated, a firmly underwritten offering of the Company capital stock on a major stock exchange that meets certain requirements, then holders of the Stock Consideration may collectively elect to exchange, during the 60-day period commencing the date that is the 18 month anniversary of the Closing (the "Share Exchange"), the Stock Consideration for shares of Sorrento's common stock with a value of \$55.0 million based on a price per share of Sorrento's common stock equal to the greater of (a) the 30-day trailing volume weighted average price of one share of Sorrento's common stock as reported on The Nasdaq Stock Market LLC as of the consummation of the Share Exchange and (b) \$5.55 (subject to adjustment for any stock dividend, stock split, stock combination, reclassification or similar transaction) (the "Exchange Price"). Pursuant to an amendment to the Exchange Agreement entered into by Sorrento on September 28, 2020, on October 9, 2020, Sorrento paid \$55.0 million in cash to the Semnur Equityholders in lieu of issuing \$55.0 million of shares of Sorrento's common stock at the Exchange Price. Following the completion of the Share Exchange and as of December 31, 2020, Sorrento held approximately 82.3% of the outstanding common stock of the Company. On January 29, 2021, Sorrento acquired additional shares of the Company, resulting in Sorrento holding approximately 99.97% of the outstanding common stock of the Company.

The March 2019 transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in the single asset, SP-102. As a result, approximately \$75.3 million was expensed as a component of acquired in-process research and development during the year ended December 31, 2019.

No contingent consideration was recorded as of September 30, 2022 and December 31, 2021 since the related regulatory approval milestones are not deemed probable until they actually occur.

#### *SP-104 Acquisition*

On May 12, 2022, the Company entered into a bill of sale and assignment and assumption agreement (the "Bill of Sale"), with Sorrento. Pursuant to the Bill of Sale, Sorrento sold, conveyed, assigned and transferred to the Company all of its rights, title and interest in and to Sorrento's Delayed Burst Release Low Dose Naltrexone ("DBR-LDN") asset and intellectual property rights, for the treatment of chronic pain, fibromyalgia and chronic post-COVID syndrome (collectively, the "SP-104 Assets"). These assets had previously been acquired by Sorrento from Aardvark Therapeutics, Inc. ("Aardvark") in April 2021 pursuant to an asset purchase agreement (the "Aardvark Asset Purchase Agreement"). Pursuant to the Bill of Sale, the Company assumed all of Sorrento's rights, liabilities and obligations under the Aardvark Asset Purchase Agreement (the "SP-104 Acquisition").

As consideration for the SP-104 Acquisition, the Company issued a promissory note in the aggregate principal amount of \$5.0 million to Sorrento (the “2022 Promissory Note”). Upon issuance of the note, the Company recorded a related party note payable liability of \$4.1 million, net of discount, with an offset to additional paid in capital, given the common control relationship between Sorrento and the Company. The 2022 Promissory Note matures seven years from the date of issuance and bears interest at the rate equal to the lesser of (a) 2.66% simple interest per annum and (b) the maximum interest rate permitted under law. The 2022 Promissory Note is payable in cash, shares of the Company’s common stock or any combination thereof, at the Company’s sole discretion, and may be prepaid in whole or in part at any time without penalty.

As the successor to the Aardvark Asset Purchase Agreement, the Company is obligated to pay Aardvark (i) \$3,000,000, upon initial approval by the FDA of a new drug application for the SP-104 Assets (which amount may be paid in shares of the Company’s common stock or cash, in the Company’s sole discretion) (the “Development Milestone Payment”) and (ii) \$20,000,000, in cash, upon achievement of certain net sales by the Company of a commercial product that uses the SP-104 Assets.

The Company will also pay Aardvark certain royalties in the single digits based on percentages of annual net sales by the Company of a commercial product that uses the SP-104 Assets. The transaction was accounted for as an asset acquisition as substantially all the value of the gross assets was concentrated in a single asset, SP-104 Assets. The contingent milestones and sale volume-based future royalties were determined to meet a scope exception for derivative under ASC Topic 815, *Derivatives and Hedging*, and will not be recognized until the contingencies are realized in accordance with the Company’s accounting policy for contingent consideration in an asset acquisition. No contingent consideration was recognized at September 30, 2022.

Tien-Li Lee, MD, a member of the board of directors of the Company, is the founder and chief executive officer of Aardvark. Kim D. Janda, Ph.D., a member of the Board of Directors of Sorrento, is a member of the advisory board of Aardvark.

#### *GLOPERBA License Agreement*

On June 14, 2022, the Company entered into a license agreement (the “Romeg License Agreement”) with RxOmeg Therapeutics, LLC (a/k/a Romeg Therapeutics, Inc.) (“Romeg”). Pursuant to the Romeg License Agreement, among other things, Romeg granted the Company (a) a transferable license, with the right to sublicense, under the patents and know-how specified therein (with such license to know-how being exclusive for the limited purposes specified therein) to (i) commercialize the pharmaceutical product comprising liquid formulations of colchicine for the prophylactic treatment of gout in adult humans (the “Initial Licensed Product” or “GLOPERBA”) in the United States of America (including its territories) (the “Territory”), (ii) develop other products comprising the Initial Licensed Product as an active pharmaceutical ingredient (the “Licensed Products”) and commercialize any such products and (iii) manufacture Licensed Products anywhere in the world, solely for commercialization in the Territory and (b) an exclusive, transferable license, with right to sublicense, to use the trademark GLOPERBA and logos, designs, translations, and modifications thereof in connection with the commercialization of the Initial Licensed Product solely in the Territory. The Initial Licensed Product, GLOPERBA, was approved and made available in the United States in 2020.

As consideration for the license under the Romeg License Agreement, the Company paid Romeg an up-front license fee of \$2.0 million, and has agreed to pay Romeg (a) upon the Company’s achievement of certain net sales milestones, certain milestone payments in the aggregate amount of up to \$13.0 million, (b) certain royalties in the mid-single digit to low-double digit percentages based on annual net sales of the Licensed Product by the Company during the applicable royalty term under the Romeg License Agreement, and (c) minimum quarterly royalty payments totaling \$7.1 million commencing on the first year anniversary of the effective date of the Romeg License Agreement and ending on the later of (i) expiration of the last to expire of the licensed patents covering the Licensed Products in the Territory or (ii) the tenth anniversary of the effective date of the Romeg License Agreement.

The transaction was accounted for as an asset acquisition since substantially all the value of the gross assets was concentrated in a single asset, which is the Initial Licensed Product. In connection with the Romeg License Agreement, the Company recorded an intangible asset for acquired licenses of \$5.7 million, which is comprised of the upfront license fee of \$2.0 million and a deferred consideration of \$3.7 million that is the present value of the future minimum royalty payments and immaterial transaction costs. The contingent sales milestones and sales volume-based future royalties were determined to meet a scope exception for derivative under ASC Topic 815, and will not be recognized until the contingencies are realized. No contingent consideration was recognized as a liability or included in the fair value of the asset as of September 30, 2022. The Company determined the useful life of the intangible asset to be approximately 15 years, which approximates the life of the licensed patents covering the Initial Licensed Product.

#### 4. Fair Value Measurements

The following table presents the Company's financial assets and liabilities that are measured at fair value (in thousands):

	Fair value measurements at September 30, 2022			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash and cash equivalents	\$2,483	\$ 2,483	\$ —	\$ —
<b>Total assets measured at fair value</b>	<b>\$2,483</b>	<b>\$ 2,483</b>	<b>\$ —</b>	<b>\$ —</b>
	Fair value measurements at December 31, 2021			
	Balance	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets</b>				
Cash and cash equivalents	\$ 4,338	\$ 4,338	\$ —	\$ —
<b>Total assets measured at fair value</b>	<b>\$ 4,338</b>	<b>\$ 4,338</b>	<b>\$ —</b>	<b>\$ —</b>
<b>Liabilities</b>				
Derivative liabilities	\$35,700	\$ —	\$ —	\$ 35,700
<b>Total liabilities measured at fair value</b>	<b>\$35,700</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 35,700</b>

The Company's financial assets carried at fair value are comprised of cash and cash equivalents. Cash and cash equivalents consist of money market accounts and bank deposits which are highly liquid and readily tradable. These assets are valued using inputs observable in active markets for identical securities.

#### Derivative liabilities

The Company recorded a gain of \$5.3 million and \$0.1 million on derivative liabilities for the nine months ended September 30, 2022 and 2021, respectively, which was attributed to compound derivative liabilities associated with the Scilex Pharma Notes (see Note 6). The fair value of the derivative liability associated with the Scilex Pharma Notes decreased by \$30.4 million immediately after the entry into Amendment No. 4 (see Note 6) associated with the Scilex Pharma Notes on June 2, 2022 (see Note 6). Amendment No. 4 was accounted for as troubled debt restructuring; therefore, the carrying amount of the Scilex Pharma Notes, net, was adjusted to reflect the aforementioned change in fair value of the derivative liability. The fair value of the derivative liability associated with the Scilex Pharma Notes was estimated using the discounted cash flow method combined with a Monte Carlo simulation model including consideration of the terms of Amendment No. 4. Significant Level 3 assumptions used in the measurement included a 6.1% risk adjusted net sales forecast and an effective debt yield of 21.5% as of June 30, 2022. The Scilex Pharma Notes were fully extinguished in September 2022 (see Note 6) and, as such, there were no remaining derivative liabilities as of September 30, 2022.

The following table includes a summary of the derivative liabilities measured at fair value using significant unobservable inputs (Level 3) during the nine months ended September 30, 2022:

	<u>Fair value</u>
Balance at December 31, 2021	\$ 35,700
Change in fair value measurement	(35,700)
Balance at September 30, 2022	<u>\$ —</u>

## 5. Goodwill and Intangible Assets

As of September 30, 2022 and December 31, 2021, the Company had recorded goodwill of \$13.5 million. The Company performed a qualitative test for goodwill impairment during the fourth quarter of 2021. Based upon the results of the qualitative testing, the Company concluded that it is more-likely-than-not that the fair value of the Company's goodwill was in excess of the carrying value and therefore performing the first step of the two-step impairment test was unnecessary. The conclusion has not changed as of September 30, 2022 and no goodwill impairment was recognized for the nine months ended September 30, 2022 and 2021.

The Company's intangible assets, excluding goodwill, are composed of patent rights, acquired technology, acquired licenses, and assembled workforce. Amortization of the intangible assets that have finite useful lives is generally recorded on a straight-line basis over their useful lives. A summary of the Company's identifiable intangible assets as of September 30, 2022 and December 31, 2021 is as follows (in thousands):

	<u>Nine months ended September 30, 2022</u>		
	<u>Gross carrying amount</u>	<u>Accumulated amortization</u>	<u>Intangibles, net</u>
Patent rights	\$ 32,630	\$ 12,871	\$ 19,759
Acquired technology	21,940	5,851	16,089
Acquired licenses	5,711	92	5,619
Assembled workforce	500	350	150
Total intangible assets	<u>\$ 60,781</u>	<u>\$ 19,164</u>	<u>\$ 41,617</u>

	December 31, 2021		
	Gross carrying amount	Accumulated amortization	Intangibles, net
Patent rights	\$ 32,630	\$ 11,239	\$ 21,391
Acquired technology	21,940	4,754	17,186
Assembled workforce	500	275	225
Total intangible assets	<u>\$ 55,070</u>	<u>\$ 16,268</u>	<u>\$ 38,802</u>

On June 14, 2022, the Company entered into Romeg License Agreement to acquire an exclusive license to use GLOPERBA from Romeg (see Note 3). The Company determined the acquisition of licenses to be an asset acquisition. The fair value of consideration transferred of \$5.7 million was assigned to acquired licenses with an amortization period of approximately 15 years.

As of September 30, 2022, the weighted average remaining life for identifiable intangible assets was 10.6 years. Aggregate amortization expense was \$2.9 million and \$2.8 million for the nine months ended September 30, 2022 and 2021, respectively. Patent rights and acquired technology are amortized over a 15-year period. Assembled workforce is amortized over a 5-year period.

Estimated future amortization expense related to intangible assets at September 30, 2022 is as follows (in thousands):

Year ended December 31,	Amount
2022 (remaining three months)	\$ 1,027
2023	\$ 4,106
2024	\$ 4,031
2025	\$ 4,006
2026	\$ 4,006
Thereafter	\$24,441
Total	<u>\$41,617</u>

## 6. Debt

### *2018 Purchase Agreements and Indenture*

On September 7, 2018, Scilex Pharma and Sorrento entered into Purchase Agreements (the “2018 Purchase Agreements”) with certain investors (collectively, the “Scilex Pharma Note Purchasers”). Pursuant to the 2018 Purchase Agreements, on September 7, 2018, Scilex Pharma, among other things, issued and sold to the Scilex Pharma Note Purchasers senior secured notes due 2026 in an aggregate principal amount of \$224.0 million (the “Scilex Pharma Notes”) for an aggregate purchase price of \$140.0 million (the “Offering”). The Scilex Pharma Notes are governed by an indenture (as amended, the “Indenture”) with Scilex Pharma, as issuer, U.S. Bank National Association, a national banking association, as trustee (the “Trustee”) and collateral agent (the “Collateral Agent”), and Sorrento, as guarantor. Pursuant to the Indenture, Sorrento agreed to irrevocably and unconditionally guarantee, on a senior unsecured basis, the punctual performance and payment when due of all obligations of Scilex Pharma under the Indenture (the “Guarantee”).

Actual cumulative net sales of ZTlido from the issue date of the Scilex Pharma Notes through December 31, 2021 did not equal or exceed \$481.0 million, which resulted in a \$28.0 million increase in the principal amount of the Scilex Pharma Notes, effective February 15, 2022. As a result, the Company recorded the increase of \$28.0 million in principal and non-operating expense at December 31, 2021.

Effective February 14, 2022, Scilex Pharma issued to Sorrento a draw notice under the Letter of Credit as required under the terms of the Indenture because actual cumulative net sales of ZTlido from the issue date of the Scilex Pharma Notes through December 31, 2021 were less than a specified sales threshold for such period. As a result of the draw notice being issued, Sorrento paid to Scilex Pharma \$35.0 million in a single lump-sum amount as a subordinated loan and Scilex Pharma became subject to a minimum cash requirement of \$10.0 million. In February 2022, Scilex Pharma repurchased Scilex Pharma Notes from the holders thereof on a pro rata basis in an aggregate amount equal to \$20.0 million.

On June 2, 2022, Sorrento and Scilex Pharma entered into a Consent Under and Amendment No. 4 to Indenture (the “Amendment No. 4”) with U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association) and the Scilex Note Purchasers. Pursuant to Amendment No. 4, (1) on June 3, 2022, Scilex Pharma repurchased approximately \$41.4 million of the aggregate principal amount of the outstanding Scilex Pharma Notes at 100% of the principal amount thereof, (2) the Scilex Note Purchasers agreed that Scilex Pharma can repurchase the remaining principal amount of the Scilex Pharma Notes at any time on or before September 30, 2022 for \$41.4 million (subject to reduction for any quarterly royalty payments) and upon such repurchase the Scilex Note Purchasers will forgive and discharge \$28.0 million of the aggregate principal amount of the Scilex Pharma Notes (the “Early Paydown Provision”), (3) the minimum cash requirement under the Indenture was reduced to \$5.0 million in aggregate unrestricted cash equivalents at the end of each calendar month, and (4) the maximum aggregate principal amount on the promissory note issued by Scilex Pharma to Sorrento on October 5, 2018 was increased from up to \$25.0 million to up to \$50.0 million. The Company funded the repurchase with cash-on-hand and \$15.0 million received from Sorrento on June 2, 2022, which was recorded under the current related party notes payable in the Company’s consolidated balance sheets (see Note 10). The Company concluded that the Amendment No. 4 was a troubled debt restructuring for accounting purposes. The future undiscounted cash flows of the Scilex Pharma Notes were higher than the carrying value of the Scilex Pharma Notes at the time of the entry into the Amendment No. 4, and accordingly, no gain was recognized in the quarter ended June 30, 2022. Due to a decrease of \$30.4 million in the fair value of the Scilex Notes Derivative caused by the Amendment No. 4, the carrying value of the Scilex Notes was increased by \$30.4 million.

In September 2022, the Company exercised the Early Paydown Provision to fully extinguish the Scilex Pharma Notes. In August and September 2022, the Company made principal payments towards the outstanding Scilex Pharma Notes totaling \$1.7 million and \$39.7 million, respectively. Pursuant to Amendment No. 4, \$28.0 million of principal amount on the Scilex Pharma Notes was forgiven by the Scilex Pharma Note Purchasers and the Scilex Pharma Notes were fully extinguished in September 2022. The Company recorded a gain on debt extinguishment of \$33.4 million as a result of the extinguishment. There are no derivative liabilities as of September 30, 2022.

Borrowings of the Scilex Notes consisted of the following (in thousands):

	<u>September 30, 2022</u>	<u>December 31, 2021</u>
Principal	\$ —	\$ 133,997
Unamortized debt discount	—	(30,597)
Unamortized debt issuance costs	—	(2,228)
Carrying value	—	101,172
Current portion	—	(29,135)
Long term portion	—	72,037
Estimated fair value	<u>\$ —</u>	<u>\$ 115,400</u>

The Company made principal payments of \$106.0 million and \$44.2 million during the nine months ended September 30, 2022 and 2021, respectively. The imputed effective interest rate at December 31, 2021 was 7.7%. The amount of debt discount and debt issuance costs included in interest expense for the nine months ended September 30, 2022 and 2021 was approximately \$3.1 million and \$5.9 million, respectively. The Company recorded a gain on debt extinguishment of \$28.6 million and a loss on debt extinguishment of \$14.0 million in connection with its repayments of principal made during the nine months ended September 30, 2022 and 2021, respectively.

#### ***Related Party Notes Payable***

On October 5, 2018, Scilex Pharma issued to Sorrento a promissory note (see Note 10). On March 18, 2019, the Company entered into a note payable with Sorrento (see Note 10). On February 14, 2022, Sorrento paid to Scilex Pharma \$35.0 million in a single lump-sum amount as a subordinated loan (see Note 10). On May 12, 2022, the Company issued Sorrento a promissory note of \$5.0 million in exchange for the SP-104 Assets (see Note 3).

#### ***2020 Revolving Credit Facility***

On December 14, 2020, Scilex Pharma entered into the Credit and Security Agreement (the “Credit Agreement”) with CNH Finance Fund I, L.P. (“CNH”) which provides Scilex Pharma with the ability to incur indebtedness under an accounts receivable revolving loan facility in an aggregate amount of \$10.0 million and the incurrence of liens and the pledge of collateral to CNH in connection with the revolving loan facility. Under the terms of the Credit Agreement, interest will accrue daily on the principal amount outstanding at a rate per annum equal to the Wall Street Journal Prime Rate plus 1.75%. All indebtedness incurred and outstanding will be due and payable in full on January 1, 2024; unless the Credit Agreement is earlier terminated. As of December 31, 2021, the outstanding balance was \$8.8 million. On February 16, 2022, the Company notified CNH that it was terminating the Credit Agreement, effective March 18, 2022. Upon termination, all principal balances and interest accrued were settled.

### **7. Stock Incentive and Employee Benefit Plans**

#### ***2017 Equity Incentive Plan***

In June 2017, Scilex Pharma adopted the Scilex Pharmaceuticals Inc. 2017 Equity Incentive Plan (the “Scilex Pharma 2017 Plan”). The Scilex Pharma 2017 Plan reserved 24.0 million shares of Scilex Pharma common stock. Stock options granted under the Scilex Pharma 2017 Plan typically vest 1/4th of the shares on the first anniversary of the vesting commencement date and 1/48th of the remaining options vest each month thereafter. The Scilex Pharma 2017 Plan was amended and restated on July 5, 2018.

Upon the closing of the Merger of Semnur, the Scilex Pharma 2017 Plan was terminated, and each option to purchase Scilex Pharma’s common stock outstanding and unexercised immediately prior to the closing of the Merger of Semnur was cancelled and substituted for that number of options to acquire common stock of Scilex Holding.

#### ***Scilex Holding Company 2019 Stock Option Plan***

The board of directors of the Company adopted the Scilex Holding Company 2019 Stock Option Plan (the “2019 Stock Option Plan”) on May 28, 2019. The 2019 Stock Option Plan was approved by the Company’s stockholders on June 7, 2019. As of December 31, 2019, 30.0 million shares of common stock of the Company were reserved for issuance pursuant to the 2019 Stock Option Plan. On December 21, 2020, the board of directors approved an amendment to the 2019 Stock Option Plan to reserve an additional 15.0 million shares of common stock for issuance under the 2019 Stock Option Plan. As of December 31, 2020, 45.0 million shares of common stock of the Company were reserved for issuance pursuant to the 2019 Stock Option Plan. Stock options granted under the 2019 Stock Option Plan typically vest with respect to 1/4th of the shares on the first anniversary of the vesting commencement date and 1/48th of the remaining shares on each monthly anniversary thereafter.



As of September 30, 2022, options to purchase 25,159,760 shares of the common stock of Scilex Holding were outstanding, which is comprised of options to purchase 24,054,760 shares of common stock that were outstanding under the 2019 Stock Option Plan and options to purchase 1,105,000 shares of common stock that were outstanding pursuant to options previously granted under the Scilex Pharma 2017 Plan. As of September 30, 2022, 20,945,240 shares of the Company's common stock were reserved for awards available for future issuance under the 2019 Stock Option Plan.

Total stock-based compensation recorded within operating expenses was \$4.0 million and \$4.4 million for the nine months ended September 30, 2022 and 2021, respectively.

The total unrecognized compensation costs related to unvested employee and non-employee stock option grants as of September 30, 2022 was \$3.9 million and the weighted average period over which these grants are expected to vest is 1.4 years.

### ***Employee Benefit Plan***

The Company maintains a defined contribution 401(k) plan available to eligible employees, which is administered by Sorrento. Employee contributions are voluntary and are determined on an individual basis, limited to the maximum amount allowable under federal tax regulations. The Company made matching contributions to the 401(k) plan totaling \$0.3 million and \$0.2 million for each of the nine months ended September 30, 2022 and 2021, respectively.

## **8. Commitments and Contingencies**

### ***Product Development Agreement***

In February 2013, Scilex Pharma became a party to a product development agreement (as amended, the "Product Development Agreement") with two parties (the "Developers"), one of which is ITOCHU CHEMICAL FRONTIER Corporation ("Itochu"), pursuant to which the Developers will manufacture and supply lidocaine tape products, including ZTlido and SP-103 (the "Products"), for Scilex Pharma. The Developers initially developed, and have intellectual property rights relating to, the Products. Pursuant to the Product Development Agreement, Scilex Pharma acquired an exclusive right to develop and commercialize the Products worldwide except for Japan. The Developers are responsible for sourcing and supplying lidocaine for development and commercialization purposes.

Pursuant to the Product Development Agreement, Scilex Pharma is required to make aggregate royalty payments between 25% and 35% to the Developers based on net profits. During the nine months ended September 30, 2022, Scilex Pharma made the first royalty payments in the amount of \$0.2 million. Net profits are defined as net sales, less cost of goods and marketing expenses. Net sales are defined as total gross sales of any Product, less all applicable deductions, to the extent accrued, paid or allowed in the ordinary course of business with respect to the sale of such Product, and to the extent that they are in accordance with U.S. GAAP. If Scilex Pharma were to sublicense the licensed technologies, the Developers will receive the same proportion of any sublicensing fees received therefrom. The Product Development Agreement will continue in full force and effect until October 2, 2028, the date that is ten years from the date of the first commercial sale of ZTlido. The Product Development Agreement will renew automatically for subsequent successive one-year renewal periods unless Scilex Pharma or the Developers terminate it upon 6-month written notice. In addition, Scilex Pharma or the Developers may terminate the Product Development Agreement if (1) the other party is in material breach of the agreement and the breach is not curable, or if the breach is curable and the breaching party has not cured such material breach within 180 days after notice requesting to cure; (2) the FDA determines that the formulation of the Products would not be eligible for FDA approval in the absence of efficacy studies, and the Developers are unable to address the efficacy study requirements despite good faith efforts; (3) the market conditions are such that (a) commencing with the quarter ending March 31, 2023, Scilex Pharma's total net profits of the Products are equal to or less than 5% of Scilex Pharma's net sales of the Products for a period of four or more consecutive quarters, or (b) the Products' economic viability is affected by documented external circumstances deemed detrimental to all parties as agreed to by Scilex Pharma and the Developers, and the parties are unable to resolve the economic viability concerns under the foregoing clauses (a) and (b) after 30 days of good-faith discussion; (4) the parties fail to reach mutual agreement as to who will conduct the clinical studies and how the costs will be allocated; or (5) Scilex Pharma or either one of the Developers are bankrupt or make assignment for the benefit of creditors. Up to the date the financial statements were issued, the Company's net profits for ZTlido and SP-103 have not exceeded five percent of net sales. Accordingly, Oishi and Itochu have the right to terminate the Product Development Agreement and Commercial Supply Agreement. As of the date of the Current Report on Form 8-K to which these unaudited consolidated financial statements of Scilex are attached as an exhibit, neither Oishi nor Itochu has exercised its right of termination. Additionally, Scilex Pharma may terminate the Product Development Agreement if (i) any of the pivotal human clinical trials for any of the Products fail, or (ii) the FDA issues a "Refusal to File" for any of the Products' regulatory approval application and, after reasonable consultation with the Developers, Scilex Pharma believes that it is commercially unreasonable to re-file. The Developers may terminate the Product Development Agreement if Scilex Pharma fails to file for regulatory approval for any of the Products within three months of the date on which all required components of the regulatory approval application are received by Scilex Pharma.

On February 16, 2017, Scilex Pharma entered into a Commercial Supply Agreement (as amended, the “Supply Agreement”) with the two Developers to provide commercial supply of ZTlido and SP-103 to Scilex Pharma. The Supply Agreement contains standard terms regarding term, termination, payment, product quality and supply. In addition, the agreement provides additional terms regarding the calculation and amount of marketing expenses that may be deducted from net sales for purposes of determining the amount of net profit under the Product Development Agreement.

#### ***Exclusive Distribution Agreement***

In August 2015, Scilex Pharma entered into an Exclusive Distribution Agreement (the “Distribution Agreement”) to appoint an exclusive third-party logistics distribution provider (the “Distributor”) and as an authorized distributor of record of ZTlido (“Product”) in the United States, its territories, possessions and commonwealths for an agreed schedule of fees, subject to a 3% annual adjustment. The Distribution Agreement has an initial term of three years following the first shipment of FDA-approved Product to a commercial customer and shall automatically renew for additional terms of one year each, unless written notice of termination is given by either party at least 30 days prior to the end of the initial term or any renewal term. In the event of Product recalls, Scilex Pharma is solely responsible for all Product recalls, except in the event where the recalls arise from the Distributor’s negligence or willful misconduct. Pursuant to the Distribution Agreement, Scilex Pharma will be responsible for delivery of Product to and from the Distributor’s facility, including all costs, expenses and risk of loss associated with such delivery. From late 2018 to early 2022, ZTlido was sold, and title was transferred, to the Distributor for distribution and sale to wholesalers for a fee of between 1% to 2% which was recorded as a gross-to-net sales adjustment. Beginning in April 2022, Scilex Pharma began directly selling and transferring title to distributors.

### ***Sales Operations Services***

In January 2016, Scilex Pharma entered into a project agreement with a vendor to provide sales operations services and detailing services, which was subsequently superseded by a new project agreement entered into in September 2018 (the “Project Agreement”). In connection with the detailing services, the Project Agreement provides that the vendor will provide Scilex Pharma with full-time sales representatives who shall detail the Product by making calls pursuant to a call plan on targets. These sales representatives are to be managed by field talent managers and a national project director, each of whom will also be provided by the vendor. In connection with the sales operation services, the vendor will provide certain services required for the initial implementation and ongoing operation of the sales force.

On July 1, 2020, Scilex Pharma and the vendor entered into a work order in which the parties agreed to convert substantially all of the sales representatives allocated under the Project Agreement to become employees of Scilex Pharma. The vendor will continue to provide sales operations services, fleet management services and sample accountability services. The work order was in effect until June 30, 2022 and was extended for one year upon the mutual agreement of both parties. Either party may terminate the work order with 90 days’ notice. Scilex Pharma paid an implementation fee of \$59.0 thousand and will pay fixed monthly fees of \$63.7 thousand to \$65.8 thousand for ongoing services.

The Company recognized an expense of \$0.5 million and \$1.6 million within selling, general and administrative expenses for services performed for the nine months ended September 30, 2022 and 2021, respectively, including implementation fees, fixed monthly fees and pass-through costs.

### ***Litigation***

In the normal course of business, the Company may be named as a defendant in one or more lawsuits. Other than the following three lawsuits, the Company is not a party to any outstanding material litigation and management is not aware of any legal proceedings that, individually or in the aggregate, are deemed to be material to the Company’s financial condition or results of operations.

#### *Sanofi-Aventis U.S. LLC and Hisamitsu America, Inc. Litigation*

On February 23, 2021, the Company filed an action in the U.S. District Court for the Northern District of California against Sanofi-Aventis U.S. LLC and Hisamitsu America, Inc., two manufacturers of OTC lidocaine patch products, alleging, among other things, false and deceptive advertising and unfair competition under the Lanham Act and California state laws by those companies regarding their respective OTC patch products (the “Sanofi-Aventis & Hisamitsu Litigation”). This lawsuit seeks, among other relief, damages and an injunction enjoining the defendants from continuing to make false or misleading statements of fact about their respective OTC lidocaine patch products. The defendants have filed motions to dismiss, which have narrowed slightly our claims, but which motions the court has largely rejected. Discovery is proceeding. The case is currently scheduled for trial to begin on July 24, 2023. The Company cannot make any predictions about the outcome in this matter or the timing thereof.

#### *Former Employee Litigation*

On March 12, 2021, the Company filed an action in the Delaware Court of Chancery against Anthony Mack, former President of Scilex Pharma, and Virpax Pharmaceuticals, Inc. (“Virpax”), a company now headed by Mr. Mack, alleging, among other things, breach by Mr. Mack of his non-compete agreement with us, breach of fiduciary duty, and tortious interference by Virpax with that non-compete agreement (the “Former Employee Litigation”). This lawsuit seeks, among other relief, damages and an injunction enjoining Mr. Mack from further violating his non-compete agreement and enjoining Virpax from tortiously interfering with Mr. Mack’s non-compete agreement. The case was tried from September 12-14, 2022. Post-trial briefing is underway and closing arguments remain. The Company cannot make any predictions about the outcome in this matter or the timing thereof.

## ZTlido Patent Litigation

On June 22, 2022, the Company filed a complaint against Aveva Drug Delivery Systems, Inc., Apotex Corp., and Apotex, Inc. (together, "Aveva") in the U.S. District Court for the Southern District of Florida (the "Aveva Patent Litigation") alleging infringement of certain Orange Book listed patents covering ZTlido (the "ZTlido Patents"). The Aveva Patent Litigation was initiated following the submission by Aveva, in accordance with the procedures set out in the Hatch-Waxman Act, of an ANDA. Aveva's ANDA seeks approval to market a generic version of ZTlido prior to the expiration of the ZTlido Patents and alleges that the ZTlido Patents are invalid, unenforceable, and/or not infringed. The Company is seeking, among other relief, an order that the effective date of any FDA approval of Aveva's ANDA be no earlier than the expiration of the asserted patents listed in the Orange Book, the latest of which expires on May 10, 2031, and such further and other relief as the court may deem appropriate. Aveva is subject to a 30-month stay preventing it from selling a generic version of ZTlido during that time. The stay should expire no earlier than November 11, 2024. Trial in the Aveva Patent Litigation has not yet been scheduled. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

## Operating Leases

Supplemental quantitative information related to leases includes the following:

	Nine Months Ended September 30,	
	2022	2021
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 531	\$ 489
ROU assets obtained in exchange for new operating lease liabilities	\$ 320	\$ —
Weighted average remaining lease term in years — operating leases	2.0	3.1
Weighted average discount rate — operating leases	11.8%	12.2%

In June 2022, the Company entered into a new non-cancelable lease agreement for an administrative facility in Palo Alto. The lease includes annual rent increases and the option to extend. The term of the new lease is 26 months and the Company expects to exercise the extension option at the end of the lease.

Maturities of lease liabilities were as follows (in thousands):

Year Ending December 31,	Amount
2022 (Remaining three months)	\$ 215
2023	872
2024	703
2025	—
2026	—
Total lease payments	1,790
Less imputed interest	(210)
Total lease liabilities as of September 30, 2022	<u>\$1,580</u>

## 9. Income Taxes

The Company maintains deferred tax assets that reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. These deferred tax assets include net operating loss carryforwards, research credits and temporary differences. In assessing the Company's ability to realize deferred tax assets, management considers, on a periodic basis, whether it is more likely than not that some portion or all the deferred tax assets will not be realized. As such, management has determined that it is appropriate to maintain a valuation allowance against the Company's deferred tax assets.

The Company's income tax (benefit) expense of \$(36.4) thousand and \$10.0 thousand reflect effective tax rates of 0.7% and 0.02% for the nine months ended September 30, 2022 and 2021, respectively.

The difference between the expected statutory federal tax rate of 21.0% and the 0.7% effective tax rate for the nine months ended September 30, 2022 was primarily attributable to income tax expense associated with changes in a valuation allowance.

## 10. Related Party Transactions

On March 18, 2019, the Company entered into a merger agreement with Sorrento, Semnur, Merger Sub, and Fortis Advisors LLC. Jaisim Shah, a member of Sorrento's board of directors, was Semnur's Chief Executive Officer, a member of its board of directors and a stockholder of Semnur prior to the acquisition transaction. The upfront consideration was comprised of the following: (a) a cash payment of approximately \$15.0 million, and (b) \$55.0 million of shares of the Company's common stock (47,039,315 shares issued and 352,972 shares issuable, valued at \$1.16 per share) (i.e., the Stock Consideration). Following the issuance of the Stock Consideration, Sorrento was the owner of approximately 58% of the Company's issued and outstanding capital stock as of December 31, 2019. Following the completion of the Share Exchange and as of December 31, 2020, Sorrento held approximately 82.3% of the outstanding common stock of the Company.

As of December 31, 2020, approximately 14.7% of the outstanding capital stock of the Company was held by Itochu. On January 13, 2021, 34,889,868 shares of the Company representing all outstanding capital stock of the Company held by Itochu were acquired by non-related minority shareholders. Thus, Itochu is not a shareholder subsequent to January 13, 2021. On January 29, 2021, Sorrento acquired 34,889,868 shares of the Company, resulting in Sorrento holding approximately 99.97% of the Company. During the nine months ended September 30, 2022 and 2021, the Company purchased approximately \$4.0 million and \$4.8 million, respectively, of inventory from Itochu, a previous minority shareholder of the Company and a Developer in the aforementioned Product Development Agreement. These costs are recorded within cost of revenues and selling, general and administrative expenses in the Company's statement of operations.

Semnur is party to an Assignment Agreement, dated August 6, 2013 (the "Assignment Agreement"), with Shah Investor LP ("Shah Investor"). Mahendra Shah, Ph.D., who served on the Company's board of directors from March 2019 through September 2020, is the managing partner of Shah Investor. Pursuant to the Assignment Agreement, Shah Investor assigned certain intellectual property to Semnur and Semnur agreed to pay Shah Investor a contingent quarterly royalty in the low-single digits based on quarterly net sales of any pharmaceutical formulations for local delivery of steroids by injection developed using such intellectual property, which would include SP-102. Through September 30, 2022, the Company has made no royalty payments pursuant to the Assignment Agreement.

On January 1, 2017, a Transition Services Agreement ("TSA") was executed between Scilex Pharma and Sorrento. Pursuant to the TSA, Sorrento agreed, at the Company's request, to provide directly or indirectly certain administrative, financial, legal, tax, insurance, facility, information technology and other services. In addition to the services provided under the TSA, Sorrento retains insurance coverage on behalf of the Company. During the nine months ended September 30, 2022 and 2021, the total cost of services and insurance, including an agreed-upon markup, provided to the Company and recognized in general and administrative expenses was \$3.2 million and \$3.0 million, respectively.

On March 18, 2019, the Company entered into a note payable with Sorrento with an initial principal amount of \$16.5 million for the acquisition of Semnur. The note is interest bearing at the lesser of (a) 10% simple interest per annum, and (b) the maximum interest rate permitted under law. Interest is due and payable annually. The note payable is payable upon demand and may be prepaid in whole or in part at any time without penalty or premium. During the nine months ended September 30, 2022 and 2021, Sorrento made advances to the Company in the amount of \$27.5 million and \$3.4 million, respectively, under the note payable. The outstanding principal balance of the note on September 30, 2022 and December 31, 2021 was \$47.1 million and \$19.6 million, respectively, which was recorded under the current related party note payable in the Company's consolidated balance sheets. As of September 30, 2022 and December 31, 2021, the Company had ending balances resulting from the accrued interest on the note payable of \$6.8 million and \$3.9 million, respectively, which was recorded under related party payable in the Company's consolidated balance sheets. During the nine months ended September 30, 2022, the proceeds from the note payable were used to finance the operations of the Company.

On October 5, 2018, Scilex Pharma issued to Sorrento a promissory note in the amount of approximately \$21.7 million for certain amounts previously advanced to Scilex Pharma by Sorrento. Scilex Pharma may borrow up to an aggregate of \$25.0 million of principal amount under the note payable. The promissory note is interest bearing at the lesser of (a) 10% simple interest per annum, and (b) the maximum interest rate permitted under law. All outstanding principal amounts and accrued interest are due upon maturity on August 31, 2026. On October 22, 2018, Sorrento purchased from the Company 24,117,608 shares of the Company's common stock in exchange for the repayment of \$21.7 million of indebtedness under this promissory note. During the nine months ended September 30, 2022 and 2021, Sorrento made advances to Scilex Pharma in the amount of \$0 and \$8.1 million, respectively, under the promissory note. As of September 30, 2022 and December 31, 2021, the Company had ending balances resulting from the accrued interest on the note payable of \$4.9 million and \$3.1 million, respectively, which was recorded under related party payable in the Company's consolidated balance sheets. As of September 30, 2022 and December 31, 2021, Scilex Pharma's outstanding principal balance under the promissory note was \$23.5 million, which was recorded under the non-current related party note payable in the Company's consolidated balance sheets.

The Company received \$35.0 million in February 2022 to fund the payment of Scilex Pharma Notes in February 2022 totaling \$20.0 million, as described in Note 6. The \$35.0 million received in February 2022 is due no earlier than February 2030 and was recorded under the non-current related party note payable in the Company's consolidated balance sheets.

Additional funding received from Sorrento is due on demand and recorded under the related party payable in the Company's consolidated balance sheets. As of September 30, 2022, related party payables due to Sorrento included \$48.7 million to cover working capital requirements, \$100.0 million for repurchases of Scilex Pharma Notes, and \$17.5 million for litigation fees (see Note 8). As of December 31, 2021, related party payables due to Sorrento consisted of \$35.7 million to cover working capital requirements, \$51.0 million for repurchases of Scilex Pharma Notes, and \$6.0 million to pay litigation fees (see Note 8).

On May 12, 2022, the Company entered into the Bill of Sale, with Sorrento (see Note 3). Pursuant to the Bill of Sale, the Company assumed all of Sorrento's rights, liabilities and obligations under Aardvark Asset Purchase Agreement. The Company issued the 2022 Promissory Note to Sorrento as consideration transferred. The 2022 Promissory Note matures seven years from the date of issuance and bears interest at the rate equal to the lesser of (a) 2.66% simple interest per annum and (b) the maximum interest rate permitted under law. As of September 30, 2022, the outstanding balance, net of discount, under the 2022 Promissory Note was \$4.2 million, which was recorded under the non-current related party note payable in the Company's consolidated balance sheets.

### **Debt Exchange Agreement**

On September 12, 2022, the Company and Scilex Pharma entered into a Contribution and Satisfaction of Indebtedness Agreement (the “Debt Exchange Agreement”) with Sorrento, pursuant to which (i) Sorrento shall contribute to the Company all amounts (including accrued interest thereon, if any) for certain loans and other amounts provided by Sorrento to the Company and Scilex Pharma that remain outstanding as of immediately prior to the closing of the Business Combination (the “Aggregate Outstanding Amount” or “Outstanding Indebtedness), including with respect to the Scilex Pharma Notes, an intercompany promissory note issued by Scilex Pharma to Sorrento in the amount of approximately \$27.5 million for certain amounts previously advanced to Scilex Pharma by Sorrento, and the other notes payable to Sorrento described above (see Note 6), in exchange for the issuance by the Company to Sorrento of preferred stock of the Company, (ii) the Company shall contribute to Scilex Pharma the portion of such Outstanding Indebtedness that is owed by Scilex Pharma to Sorrento as a contribution of capital for no consideration, and (iii) upon the occurrence of the events described in clauses (i) and (ii), the Aggregate Outstanding Amount and the Outstanding Indebtedness shall be satisfied in full.

Pursuant to the terms of the Debt Exchange Agreement effective as of immediately prior to, and contingent upon, the closing of the Business Combination, Sorrento has elected to contribute the Outstanding Indebtedness to the Company in exchange for the issuance by the Company to Sorrento of that number of shares of preferred stock, par value \$0.0001 per share, of the Company (subject to adjustment for recapitalizations, stock splits, stock dividends and similar transactions) (the “Exchange Shares” and such transaction, the “Debt Contribution”) that is equal to (i) the Aggregate Outstanding Amount plus the amount equal to 10% of the Aggregate Outstanding Amount divided by (ii) \$11.00 (rounded up to the nearest whole share); provided, that in no event shall the Aggregate Outstanding Amount exceed \$310,000,000. As of September 30, 2022, the Aggregate Outstanding Amount was \$276.8 million.

On November 10, 2022, pursuant to the terms of the Debt Exchange Agreement, all existing related party indebtedness between the Company, Scilex Pharma, and Sorrento, totaling \$290.6 million, was contributed by Sorrento to the Company in exchange for 29,057,097 shares of the Company’s preferred stock. At the Effective Time, such shares were then exchanged for 29,057,097 shares of New Scilex preferred stock and 2,905,710 shares of New Scilex common stock.

### **11. Loss Per Share**

For the nine months ended September 30, 2022 and 2021, basic loss per common share is computed by dividing net loss by the weighted average number of common shares outstanding during the period. Diluted loss per common share is calculated to give effect to all dilutive securities, using the treasury stock method.

The following table sets forth the reconciliation of basic and diluted loss per share for the nine months ended September 30, 2022 and 2021 (in thousands except per share data):

	Nine Months Ended September 30,	
	2022	2021
Net loss	\$ (5,480)	\$ (46,459)
Denominator for Basic Loss Per Share	197,550	197,266
Effect of Dilutive Securities	—	—
Denominator for Diluted Loss per Share—Adjusted for Dilutive Securities	197,550	197,266
Basic Loss Per Share	\$ (0.03)	\$ (0.24)
Dilutive Loss Per Share	\$ (0.03)	\$ (0.24)

The stock options that could potentially dilute basic earnings per share in the future were excluded from the computation of diluted net loss per share because the effect would have been anti-dilutive due to the net loss for the nine months ended September 30, 2022 and 2021 were 25.2 million and 30.3 million, respectively.

## **12. Subsequent Events**

The Company has evaluated subsequent events for recognition and disclosure purposes in the unaudited consolidated financial statements as of September 30, 2022, and the nine months then ended, through November 17, 2022, the date the financial statements were available to be issued. Except as described below, or as otherwise indicated in the footnotes, the Company has concluded that no events or transactions have occurred that require disclosure.

### ***Funding Commitment Letter***

On October 17, 2022, Sorrento and the Company entered into a letter agreement (the “Funding Commitment Letter”). Pursuant to the terms of the Funding Commitment Letter, upon the written request of the Company (which request the Company shall make to the extent necessary to satisfy the closing condition in the BCA that requires the combined company to have \$5,000,001 in net tangible assets as of immediately following the effective time of the Business Combination (the “Effective Time”) under the BCA (the “Net Tangible Assets Condition”), Sorrento agreed to fund one or more loans to the Company in the amount set forth in such written request (a “Loan Request”); provided, that any amounts funded by Sorrento in respect of any Loan Request were to be treated as Outstanding Indebtedness for all purposes under the Debt Exchange Agreement and included in the calculation of the Aggregate Outstanding Amount thereunder with such amount to be contributed to the Company in exchange for shares of Legacy Scilex preferred stock. The Funding Commitment Letter also provides that, in no event shall the aggregate amount of loans made and funded by Sorrento pursuant to Loan Requests exceed the lesser of (a) \$10,000,000 and (b) an amount that, when taken together with all other Outstanding Indebtedness, will result in the Aggregate Outstanding Amount equaling \$310,000,000. The Company did not draw funds from the Funding Commitment Letter at the Effective Time.

### ***Amendment to Amended and Restated Certificate of Incorporation***

On November 10, 2022, the Company filed with the Secretary of State of the State of Delaware (i) a Certificate of Amendment to its Amended and Restated Certificate of Incorporation to increase the authorized number of shares of preferred stock of the Company from 20,000,000 to 45,000,000 and (ii) a certificate of designation setting forth the designations, powers, rights and preferences and qualifications, limitations and restrictions of the Series A Preferred Stock, par value \$0.0001 per share, of Legacy Scilex.

### ***Sorrento Absorbed Liabilities***

In October and November 2022, Sorrento entered into agreements with certain of the Company’s third party professional service providers to assume \$11.9 million of liabilities accrued by the Company, of which \$10.0 million and \$1.9 million were recorded under accounts payable and accrued expenses, respectively, within the consolidated balance sheet. The liabilities assumed by Sorrento were reclassified under related party payable within the consolidated balance sheet and subsequently exchanged on November 10, 2022 under the terms of the Debt Exchange Agreement (see Note 10).



**MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF SCILEX**

*Unless the context otherwise requires, all references in this section to “the Company”, “we”, “us” or “our” refer to the business and operations of Scilex Holding Company (formerly known as Vickers Vantage Corp. I (“Vickers”) and its subsidiaries, including those periods prior to the consummation of the Business Combination. References to “Scilex” refer to the business and operations of Scilex Holding Company, following the consummation of the business combination between Vickers and the Company. You should read the following discussion and analysis of our financial condition and results of operations together with the unaudited consolidated financial statements and the related notes appearing elsewhere in the Form 8-K (as defined below). Certain statements in this discussion are forward-looking statements. These forward-looking statements are subject to numerous risks, uncertainties and assumptions, including, but not limited to, the risks and uncertainties described in “Risk Factors” and “Cautionary Note Regarding Forward-Looking Statements.” Our actual results may differ materially from those contained in or implied by any forward-looking statements. Capitalized terms used but not defined herein have the same meaning as terms defined and included elsewhere in the Current Report on Form 8-K to which this Management’s Discussion and Analysis of Financial Condition and Results of Operations of Scilex is attached as an exhibit (the “Form 8-K”) and, if not defined in the Form 8-K, the definitive proxy statement/prospectus filed by Vickers with the U.S. Securities and Exchange Commission (the “SEC”) on October 28, 2022.*

**Overview**

We are an innovative revenue-generating company focused on acquiring, developing and commercializing non-opioid management products for the treatment of acute and chronic pain. According to the Centers for Disease Control and Prevention, an estimated 51.4 million adults in the United States suffered from chronic pain in 2019. We target indications with high unmet needs and large market opportunities with non-opioid therapies for the treatment of patients with acute and chronic pain. We launched our first commercial product in October 2018 and are developing our late-stage pipeline. Our commercial product, ZTlido is a prescription lidocaine topical product approved by the FDA for the relief of neuropathic pain associated with PHN, which is a form of post-shingles nerve pain. ZTlido possesses novel delivery and adhesion technology designed to address many of the limitations of current prescription lidocaine patches by providing significantly improved adhesion and continuous pain relief throughout the 12-hour administration period. We market ZTlido through a dedicated sales force of 60-70 sales representatives, targeting 10,000 primary care physicians, pain specialists, neurologists and palliative care physicians who we believe treat the majority of PHN patients. We in-licensed the exclusive right to commercialize GLOPERBA (colchicine USP) oral solution, an FDA-approved prophylactic treatment for painful gout flares in adults, in the U.S. We are planning to commercialize GLOPERBA in 2023 and believe we are well-positioned to market and distribute the product.

Our development pipeline consists of three product candidates, (i) SP-102 (“SEMDEXA”) (10 mg, dexamethasone sodium phosphate viscous gel), a Phase 3, novel, viscous gel formulation of a widely used corticosteroid for epidural injections to treat lumbosacral radicular pain, or sciatica, (ii) SP-103 (lidocaine topical system) 5.4%, a Phase 2, next-generation, triple-strength formulation of ZTlido, for the treatment of acute LBP, and (iii) SP-104 (4.5 mg, low-dose naltrexone hydrochloride delayed-release capsules), a novel low-dose delayed-release naltrexone hydrochloride formulation for treatment of fibromyalgia, for which Phase 1 trials were completed in the second quarter of 2022 and a Phase 2 clinical trial is expected to commence in the fourth quarter of 2022. SEMDEXA has been granted fast track designation by the FDA and, if approved, could become the first FDA-approved alternative to off-label ESIs, which are administered over 12 million times annually in the United States. Top-line results from the completed Phase 3 study have been received in November 2021 and reflected achievement of primary and secondary endpoints. SP-103 has also been granted fast track designation by the FDA and, if approved, could become the first FDA-approved lidocaine topical product for the treatment of acute LBP. SP-103 is a triple-strength lidocaine topical system designed to deliver a dose of lidocaine threefold higher than any lidocaine topical product that we are aware of, either approved or in development. We are examining SP-103 as a treatment for acute LBP, a condition with high unmet need which, as of 2019, affected over 22 million patients in the United States. According to the CDC in 2020, LBP was the most common type of pain reported by patients, with 25% of U.S. adults reporting LBP in the prior 3 months. We initiated a Phase 2 trial of SP-103 in acute LBP in the second quarter of our fiscal year 2022.

We currently contract with third parties for the manufacture, assembly, testing, packaging, storage and distribution of our product. We obtain our commercial supply of ZTlido, clinical supply of our product candidates and certain of the raw materials used in our product candidates from sole or single source suppliers and manufacturers. Prior to April 2022, we relied on a single third-party logistics distribution provider, Cardinal Health, for ZTlido distribution in the United States. Cardinal Health purchased and shipped ZTlido to customer wholesale distribution centers. Cardinal Health also performed order management services on our behalf. On April 2, 2022, we announced the expansion of our direct distribution network to national and regional wholesalers and pharmacies. Cardinal Health will continue to provide traditional third-party logistics functions for Scilex.

Since our inception, we have invested substantial efforts and financial resources on acquiring product and technology rights while building our intellectual property portfolio and infrastructure. We acquired Semnur and its lead product candidate, SEMDEXA, in the first quarter of 2019, and we intend to continue to explore and evaluate additional opportunities such as these to grow our business. We have incurred significant operating losses as a result of such investment efforts, including the development of SEMDEXA, conducting of Phase 3 trials for SEMDEXA, and the development of SP-103. Our ability to generate revenue sufficient to achieve profitability will depend on the successful commercialization of our product, ZTlido, and the development of our product candidates. For the years ended December 31, 2021, 2020 and 2019, our net loss was \$88.4 million, \$47.5 million and \$178.6 million, respectively. For the nine months ended September 30, 2022 and 2021, we had a net loss of \$5.5 million and \$46.5 million, respectively. As of September 30, 2022, we had an accumulated deficit of \$358.0 million. As of September 30, 2022, we had cash and cash equivalents of \$2.5 million.

We expect to continue to make investments in our sales and marketing organization and expand digital marketing efforts to broaden awareness of ZTlido and GLOPERBA and in research and development, clinical trials and regulatory affairs to develop our product candidates, SEMDEXA, SP-103, and SP-104 (which product candidate we acquired from Sorrento in May 2022). As a result, we will need substantial additional funding to support our continuing operations and pursue our growth strategy. Until we can generate significant revenue, if ever, we expect to finance our operations through a combination of equity offerings, debt financings, collaborations, government contracts or other strategic transactions. We may be unable to raise additional funds or enter into such agreements or arrangements when needed on favorable terms, or at all. If adequate funds on acceptable terms are not available when needed, we may be required to reduce the scope of the commercialization of ZTlido and GLOPERBA or delay, scale back or discontinue the development of one or more of our product candidates.

### **Business Combination**

On March 17, 2022, the Company entered into an Agreement and Plan of Merger (the “BCA”) with Vickers Vantage Corp. I (“Vickers”), a special purpose acquisition company, and Vantage Merger Sub, Inc., a wholly-owned subsidiary of Vickers (“Vickers Merger Sub”). Pursuant to the terms of the BCA, Vickers Merger Sub merged with and into the Company, with the Company surviving the merger (“Legacy Scilex”) and becoming a wholly-owned subsidiary of Vickers (collectively, the “Business Combination”).

On November 10, 2022, Vickers consummated the Business Combination pursuant to the terms of the BCA, with the Company and Vickers Merger Sub. Pursuant to the BCA, Vickers acquired all of the outstanding equity interests of Legacy Scilex. As a result of the Business Combination, New Scilex (as defined below) received gross proceeds of approximately \$12.0 million, prior to the settlement of transaction-related costs and expenses. Additionally, all existing related party indebtedness and payables between the Company, Scilex Pharma, and Sorrento, totaling \$290.6 million, was converted into equity interests of New Scilex in connection with the consummation of the Business Combination and pursuant to the terms of the Debt Exchange Agreement (see Note 10 titled “Related Party Transactions” to our consolidated financial statements included elsewhere in the Form 8-K for additional information). In connection with the Business Combination (as more fully described in the notes to these financial statements), Scilex Holding Company was renamed to Scilex, Inc. These financial statements are those of Scilex Holding Company (now known as Scilex, Inc.) prior to the completion of such Business Combination. Additionally, in connection with the completion of the Business Combination, Vickers was renamed to, and will operate as, “Scilex Holding Company” and the Company began trading on the Nasdaq Capital Market under the new ticker symbol “SCLX” on November 11, 2022. Scilex Holding Company following the completion of the Business Combination is sometimes referred to herein as “New Scilex.”

The Business Combination will be accounted for as a reverse recapitalization in accordance with U.S. GAAP. Under this method of accounting, Vickers is treated as the “acquired” company for accounting purposes and the Business Combination is treated as the equivalent of the Company issuing stock for the net assets of Vickers, accompanied by a recapitalization. The net assets of Vickers are stated at historical cost, with no goodwill or other intangible assets recorded.

### **Impact of COVID-19 on Our Business**

We are closely monitoring the COVID-19 pandemic and its potential impact on our business. In an effort to protect the health and safety of our employees, we took proactive action from the earliest signs of the outbreak, including implementing social distancing policies at our facilities, facilitating remote working arrangements and imposing employee travel restrictions. The extent to which COVID-19 may impact our business, clinical trials and sales of ZTlido will depend on future developments, which are highly uncertain and cannot be predicted with confidence, such as the ultimate geographic spread of the disease, the duration of the outbreak, travel restrictions and social distancing in the United States and other countries, business closures or business disruptions and the effectiveness of actions taken in the United States and other countries to contain and treat the disease.

### **Comparability of Our Results and Our Relationship with Sorrento**

We currently operate as a majority-owned subsidiary of Sorrento. As a result, our historical financial statements may not be reflective of what our results of operations would have been had we been a stand-alone public company and no longer a majority-owned subsidiary of Sorrento. In particular, certain legal, finance, human resources and other functions have historically been provided to us by Sorrento at cost plus an agreed-upon markup. We expect that Sorrento will continue to provide us with some of the services related to these functions on a transitional basis in exchange for agreed-upon fees, and we expect to incur other costs to replace the services and resources that will not be provided by Sorrento. We will also incur additional costs as a stand-alone public company. As a stand-alone public company, our total costs related to certain support functions may differ from the costs that were historically allocated to us from Sorrento. In addition, in the future, we expect to incur internal costs to implement certain new systems, including infrastructure and an enterprise resource planning system, while our legacy systems are currently being fully supported by Sorrento.

### **Components of Our Results of Operations**

#### ***Net Revenue***

Net revenue consists solely of product sales of ZTlido in the United States. For product sales of ZTlido, we record gross-to-net sales adjustments for government and commercial rebates, chargebacks, wholesaler and distributor fees, sales returns, special marketing programs, and prompt payment discounts. We expect that any net revenue we generate will fluctuate from year to year as a result of the unpredictability of the demand for our product.

## ***Operating Costs and Expenses***

### *Cost of Revenue*

Cost of revenue consists of the cost of purchasing ZTlido from our manufacturing partners and inventory write-downs related to expiration dates for on-hand inventory. We expect the cost of revenue to fluctuate with related sales revenue.

### *Research and Development.*

Research and development expenses are expensed when incurred and consist primarily of costs incurred for our research activities, including the development of our product candidates, and include:

- costs related to clinical trials;
- salaries, benefits and other related costs, including stock-based compensation expense for personnel engaged in research and development functions; and
- costs related to outside consultants.

We expect our research and development expenses to increase, as we will incur incremental expenses associated with our product candidates that are currently under development and in clinical trials. Product candidates in later stages of clinical development generally have higher development costs, primarily due to the increased size and duration of later-stage clinical trials. Accordingly, we expect to incur significant research and development expenses in connection with our ongoing Phase 3 clinical trial for SEMDEXA, our planned Phase 2 and Phase 3 clinical trials for SP-103, and initiation of Phase 2 trials for SP-104.

### *Acquired In-process Research and Development*

The Company has acquired and may continue to acquire the rights to develop and commercialize new product candidates. The up-front payments to acquire a new drug compound or drug delivery device, as well as future milestone payments associated with asset acquisitions that do not meet the definition of a derivative and are deemed probable to achieve the milestones, are immediately expensed as acquired in-process research and development provided that the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, have no alternative future use. Intangible assets acquired in a business combination that are used for in-process research and development (“IPR&D”) activities are considered indefinite-lived until the completion or abandonment of the associated research and development efforts. Upon commercialization of the relevant research and development project, the Company amortizes the acquired IPR&D over its estimated useful life. Capitalized IPR&D is reviewed annually for impairment or more frequently as changes in circumstance or the occurrence of events suggest that the remaining value may not be recoverable.

### *Selling, General and Administrative*

Selling, general and administrative expenses consist primarily of costs related to our contract sales force, salaries and other related costs, including stock-based compensation, for personnel in our executive, marketing, finance, corporate and business development and administrative functions. Selling, general and administrative expenses also include professional fees for legal, patent, accounting, auditing, tax and consulting services, travel expenses and facility-related expenses, which include direct depreciation costs and allocated expenses from Sorrento for rent and maintenance of facilities and other operating costs.

We expect that our selling, general and administrative expenses will vary year over year in the future as we adapt our commercial strategies to changes in the business environment. We also expect to incur increased expenses as a result of the Business Combination and operating as a public company, including expenses related to compliance with the rules and regulations of the SEC, and listing standards applicable to companies listed on a national securities exchange, additional insurance expenses, investor relations activities and other administrative and professional services. We also expect to adjust the size of our administrative, finance and legal functions to adapt to the changes above and the anticipated growth of our business.

### *Intangible Amortization Expense*

Intangible amortization expense consists of the amortization expense of intangible assets recognized on a straight-line basis over the estimated useful lives of the assets. Our intangible assets, excluding goodwill, are composed of patent rights, acquired in-process research and development and assembled workforce.

### ***Other Expense***

#### *Gain on Derivative Liability*

Gain on derivative liability consists of the changes to fair value of derivative liabilities between reporting periods relating to certain embedded derivative features within the Scilex Pharma Notes, and is recorded as other income or expense. See Note 6 titled “*Debt*” to our consolidated financial statements appearing elsewhere in the Form 8-K and the section titled “*Certain Relationships and Related Party Transactions—Certain Transactions of Scilex—Indenture and Letter of Credit*” for a description of the Scilex Pharma Notes.

#### *(Gain) loss on Debt Extinguishment, Net*

(Gain) loss on debt extinguishment, net consists of gains earned or losses incurred as a result of exercising our optional prepayment rights, which are treated as partial extinguishments, and the Early Paydown Provision, which is treated as a debt extinguishment, under the Scilex Pharma Notes, offset, for the year ended December 31, 2021, by a gain on debt extinguishment as a result of the forgiveness of the loan in the amount of \$1.6 million received from Bank of America in May 2020 pursuant to the Paycheck Protection Program of the CARES Act (the “PPP Loan”).

#### *Interest Expense*

Interest expense consists of interest related to the Scilex Pharma Notes and related party note payables to Sorrento.

#### *(Gain) loss on Foreign Currency Exchange*

(Gain) loss on foreign currency exchange relates to foreign exchange losses on payments made to our foreign supplier, Itochu, a manufacturer and supplier of lidocaine tape products, including ZTlido and SP-103.

## Results of Operations

The following tables summarize our results of operations for the years ended December 31, 2021, 2020 and 2019 and the nine months ended September 30, 2022 and 2021 (in thousands):

(in thousands, except for per share amounts)	Nine Months Ended September 30,	
	2022	2021
<b>Statements of Operations Data:</b>		
<b>Net revenue</b>	\$ 26,115	\$ 23,054
<b>Operating costs and expenses:</b>		
Cost of revenue	6,284	2,549
Research and development	6,457	7,031
Selling, general and administrative	41,371	36,092
Intangible amortization	2,896	2,803
<b>Total operating costs and expenses</b>	<b>57,008</b>	<b>48,475</b>
<b>Loss from operations</b>	<b>(30,893)</b>	<b>(25,421)</b>
<b>Other (income) expense:</b>		
Gain on derivative liability	(5,300)	(100)
(Gain) loss on debt extinguishment, net	(28,634)	12,463
Interest expense	8,596	8,617
(Gain) loss on foreign currency exchange	(39)	48
<b>Total other (income) expense</b>	<b>(25,377)</b>	<b>21,028</b>
<b>Loss before income taxes</b>	<b>(5,516)</b>	<b>(46,449)</b>
Income tax (benefit) expense	(36)	10
<b>Net loss</b>	<b>\$ (5,480)</b>	<b>\$ (46,459)</b>
Net loss per share – basic and diluted	(0.03)	(0.24)
Weighted average number of shares during the period—basic and diluted	197,550	197,266

  

(in thousands, except for per share amounts)	Year Ended December 31,		
	2021	2020	2019
<b>Statements of Operations Data:</b>			
<b>Net revenue</b>	\$ 31,317	\$ 23,560	\$ 21,033
<b>Operating costs and expenses:</b>			
Cost of revenue	3,634	2,149	5,802
Research and development	9,201	9,961	10,216
Acquired in-process research and development	—	—	75,301
Selling, general and administrative	50,582	42,970	64,696
Intangible amortization	3,738	3,738	3,713
<b>Total operating costs and expenses</b>	<b>67,155</b>	<b>58,818</b>	<b>159,728</b>
<b>Loss from operations</b>	<b>(35,838)</b>	<b>(35,258)</b>	<b>(138,695)</b>
<b>Other expense:</b>			
Loss (gain) on derivative liability	300	(800)	23,300
Loss on debt extinguishment, net	12,463	—	—
Scilex Pharma Notes principal increase	28,000	—	—

Interest expense	11,764	13,116	16,889
Interest income	—	—	(460)
Loss (gain) on foreign currency exchange	54	(2)	168
<b>Total other expense</b>	<u>52,581</u>	<u>12,314</u>	<u>39,897</u>
<b>Loss before income taxes</b>	<u>(88,419)</u>	<u>(47,572)</u>	<u>(178,592)</u>
Income tax (benefit) expense	5	(53)	2
<b>Net loss</b>	<u><u>\$ (88,424)</u></u>	<u><u>\$ (47,519)</u></u>	<u><u>\$ (178,594)</u></u>

#### **Comparison of Nine Months Ended September 30, 2022 and 2021**

##### ***Net Revenue***

Net revenue for the nine months ended September 30, 2022 and 2021 was \$26.1 million and \$23.1 million, respectively. The increase of \$3.0 million primarily driven by an increase in gross revenues by approximately 37% offset by increase in rebates.

##### ***Cost of Revenue***

Cost of revenue for the nine months ended September 30, 2022 and 2021 was \$6.3 million and \$2.5 million, respectively, and relate to product sales. The increase of \$3.8 million was primarily due to an approximately 37% increase in gross revenue for the nine months ended September 30, 2022, compared to the nine months ended September 30, 2021, royalty payments to our manufacturer beginning in the second quarter of 2022, and a \$0.5 million inventory reserve reversal in May 2021.

### **Research and Development Expenses**

The following table summarizes research and development expenses by project for the nine months ended September 30, 2022 and 2021 (in thousands):

	<b>Nine Months Ended September 30,</b>		
	<b>2022</b>	<b>2021</b>	<b>Increase (Decrease)</b>
<b>SP-102</b>			
Contracted R&D	\$1,329	\$5,010	\$ (3,681)
Personnel	250	444	(194)
Other	82	—	82
SP-102	1,661	5,454	(3,793)
<b>SP-103</b>			
Contracted R&D	3,520	688	2,832
Personnel	272	889	(617)
Other	796	—	796
SP-103	4,588	1,577	3,011
<b>SP-104</b>			
Contracted R&D	208	—	208
SP-104	208	—	208
Total Research and Development Expenses	<u>\$6,457</u>	<u>\$7,031</u>	<u>\$ (574)</u>

Research and development expenses for the nine months ended September 30, 2022 and 2021 were \$6.5 million and \$7.0 million, respectively. The \$0.5 million decrease in research and development expenses was primarily attributed to the completion of the Phase 3 SP-102 trial in November 2021, and was partially offset by clinical start-up costs in the development of Phase 2 SP-103 in the fourth quarter of 2021, the Phase 1 SP-104 study in the fourth quarter of 2021, and an additional Phase 1 SP-104 study in the second quarter of 2022.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses for the nine months ended September 30, 2022 and 2021 were \$41.4 million and \$36.1 million, respectively. The increase of approximately \$5.3 million was primarily due to a \$7.7 million increase in legal expenses related to the ZTlido patent infringement in which the Company was the plaintiff in September 2022, \$0.9 million increase in travel and entertainment expenses, \$0.2 million increase in consulting expenses, and a \$0.4 million increase in insurance expense, offset by a \$1.2 million decrease in commercial operations caused by fluctuation in fleet and electronics expenses, \$2.0 million decrease in personnel expense caused by \$1.0 million increase in personnel compensation that was offset by \$3.0 million decrease in bonus, a \$0.5 million decrease in marketing expense, and a \$0.2 million decrease in other expenses.

### **Intangible Amortization Expense**

Intangible amortization expense for each of the nine months ended September 30, 2022 and 2021 was \$2.9 million and \$2.8 million, respectively. The increase of \$0.1 is related to the amortization of acquired licenses for the exclusive license of GLOPERBA.

### **Gain on Derivative Liability**

Gain on derivative liability for the nine months ended September 30, 2022 and 2021 was \$5.3 million and \$0.1 million, respectively. The gain recognized during the nine months ended September 30, 2022 and 2021 was attributed to changes in the fair value of our derivative liability pertaining to the Scilex Pharma Notes due to revised sales forecasts.



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***(Gain) Loss on Debt Extinguishment, Net***

(Gain) loss on debt extinguishment, net for the nine months ended September 30, 2022 and 2021 was \$(28.6) million and \$12.5 million, respectively. The gain and loss incurred during the nine months ended September 30, 2022 and 2021, respectively, was attributed to Scilex Pharma's repurchase of the Scilex Pharma Notes of \$20.0 million and \$41.4 million in February 2022 and June 2022, respectively, as well as the Early Paydown Provision of \$39.7 million in September 2022 (see Note 6 titled "Debt" to our consolidated financial statements included elsewhere in the Form 8-K for additional information) and \$20.0 million in each of February 2021 and April 2021.

***Interest Expense***

Interest expense for the nine months ended September 30, 2022 and 2021 remained consistent and was \$8.6 million for each period

***Income Tax (Benefit) Expense***

Income tax (benefit) expense for the nine months ended September 30, 2022 and 2021 was \$(36.0) thousand and \$10.0 thousand, respectively.

**Comparison of Years Ended December 31, 2021 and 2020*****Net Revenue***

Net revenue for the years ended December 31, 2021 and 2020 was \$31.3 million and \$23.6 million, respectively. The increase of \$7.7 million was due to increased product sales of ZTlido.

***Cost of Revenue***

Cost of revenue for the years ended December 31, 2021 and 2020 was \$3.6 million and \$2.1 million, respectively, and relate to product sales. The increase of \$1.5 million is mainly due to the temporary switch of shipping method from ocean to air shipment in 2021.

### **Research and Development Expenses**

The following table summarizes research and development expenses by project for the years ended December 31, 2021 and 2020 (in thousands):

	Year Ended December 31,		
	2021	2020	Increase (Decrease)
<b>SP-102</b>			
Contracted R&D	\$5,952	\$6,641	\$ (689)
Personnel	555	395	160
SP-102	6,507	7,036	(529)
<b>SP-103</b>			
Contracted R&D	1,816	1,128	688
Personnel	878	1,797	(919)
SP-103	2,694	2,925	(231)
Total Research and Development Expenses	<u>\$9,201</u>	<u>\$9,961</u>	<u>\$ (760)</u>

Research and development expenses for the years ended December 31, 2021 and 2020 were \$9.2 million and \$10.0 million, respectively. The \$0.8 million decrease in research and development expenses was attributed to the completion of Phase 3 SP-102 trials in November 2021 as well as CMC and regulatory related expenses incurred in 2020 to prepare for SP-103 clinical trials in 2021.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses for the years ended December 31, 2021 and 2020 were \$50.6 million and \$43.0 million, respectively. The increase of approximately \$7.6 million was primarily due to \$4.0 million in additional expenses in marketing and commercial operations, \$7.6 million in legal and audit fees, and \$1.2 million in additional other administrative expenses, offset by \$5.2 million of savings in sales expenses as a result of realigning our “sales force” territories resulting in the significant reduction of salesforce. The \$7.6 million increase in legal and audit fees was primarily due to a \$6.6 million increase in litigation expenses related to the ZTlido patent infringement in which the Company was the plaintiff and \$1.0 million increase in legal intellectual property and other legal corporate matters. The \$4.0 million increase in marketing and commercial operations was due to \$1.4 million increase in product promotion expenses, \$1.0 million increase in dues and subscriptions, \$1.0 million increase in consulting expenses and \$0.6 million increase in personnel cost.

### **Intangible Amortization Expense**

Intangible amortization expense for each of the years ended December 31, 2021 and 2020 was \$3.7 million, which is related to the amortization of developed technology upon commercialization of ZTlido.

### **Loss (Gain) on Derivative Liability**

Loss (gain) on derivative liability for the years ended December 31, 2021 and 2020 was \$0.3 million and \$(0.8) million, respectively. The loss incurred during the year ended December 31, 2021 was attributed to changes in the fair value of our derivative liability pertaining to the Scilex Pharma Notes due to revised probabilities related to marketing approval timing for SP-103 and revised sales forecasts.

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***Loss on Debt Extinguishment, Net***

Loss on debt extinguishment net for the years ended December 31, 2021 was \$12.5 million. The loss incurred was attributed to the Company's exercise of the optional principal repurchase payments on the Scilex Pharma Notes, offset by a gain on debt extinguishment of \$1.5 million related to the forgiveness on the entire PPP Loan.

***Scilex Pharma Notes Principal Increase***

The principal increase on the Scilex Pharma Notes for the years ended December 31, 2021 was \$28.0 million. Actual cumulative net sales of ZTlido from the issue date of the Scilex Pharma Notes through December 31, 2021 did not equal or exceed \$481.0 million. As a result, the Company recorded the increase of \$28.0 million in principal as non-operating expense at December 31, 2021.

***Interest Expense***

Interest expense for the years ended December 31, 2021 and 2020 was \$11.8 million and \$13.1 million, respectively. The \$1.3 million decrease in interest expense was primarily due to the \$2.8 million decrease in interest expense incurred on the Scilex Pharma Notes partially offset by a \$1.1 million increase in interest expense related to related party notes with Sorrento and \$0.4 million increase in interest expense related to the CNH Revolving Loan during the year ended December 31, 2021.

***Income Tax Expense (Benefit)***

Income tax expense (benefit) for the years ended December 31, 2021 and 2020 was \$5.0 thousand and \$(53.0) thousand, respectively.

**Comparison of Years Ended December 31, 2020 and 2019*****Net Revenue***

Net revenue for the years ended December 31, 2020 and 2019 was \$23.6 million and \$21.0 million, respectively. The increase of \$2.6 million was due to product sales of ZTlido, which was commercially launched in October 2018.

***Cost of Revenue***

Cost of revenue for the years ended December 31, 2020 and 2019 was \$2.1 million and \$5.8 million, respectively, and relate to product sales. The decrease of \$3.7 million is mainly due to establishing an E&O inventory provision in 2019 for short-dated products.

### **Research and Development Expenses**

The following table summarizes research and development expenses by project for the years ended December 31, 2020 and 2019 (in thousands):

	Year Ended December 31,		
	2020	2019	Increase (Decrease)
<b>SP-102</b>			
Contracted R&D	\$6,641	\$ 7,249	\$ (608)
Personnel	395	22	373
SP-102	7,036	7,271	(235)
<b>SP-103</b>			
Contracted R&D	1,128	997	131
Personnel	1,797	1,948	(151)
SP-103	2,925	2,945	(20)
Total Research and Development Expenses	<u>\$9,961</u>	<u>\$10,216</u>	<u>\$ (255)</u>

Research and development expenses for the years ended December 31, 2020 and 2019 were \$10.0 million and \$10.2 million, respectively. The \$0.2 million decrease was primarily due to a slow down of clinical activities in the development of SP-102 due to the COVID-19 pandemic.

### **Acquired In-process Research and Development Expenses**

Acquired IPR&D expenses for the years ended December 31, 2020 and 2019 were \$0 and \$75.3 million, respectively. The decrease was due to acquired IPR&D expenses associated with our acquisition of Semnur's assets in March 2019.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses for the years ended December 31, 2020 and 2019 were \$43.0 million and \$64.7 million, respectively. The decrease of approximately \$21.7 million was primarily due to \$16.6 million of savings in sales and marketing as a result of realigning our "sales force" territories resulting in the significant reduction of salesforce as well as achieving cost-saving within our marketing programs, a reduction of \$2.4 million in third-party services within the market access department, and \$2.7 million in savings from lower legal and audit fees.

### **Intangible Amortization Expense**

Intangible amortization expense remained the same at \$3.7 million between the years ended December 31, 2020 and 2019, which is related to the amortization of developed technology upon commercialization of ZTlido.

### **(Gain) Loss on Derivative Liability**

(Gain) loss on derivative liability for the years ended December 31, 2020 and 2019 was a gain of \$0.8 million and a loss of \$23.3 million, respectively. The gain incurred during the year ended December 31, 2020 and loss incurred during the year ended December 31, 2019 was attributed to changes in the fair value of our derivative liability pertaining to the Scilex Pharma Notes due to revised probabilities related to marketing approval timing for SP-103 and revised sales forecasts.

### ***Interest Expense***

Interest expense for the years ended December 31, 2020 and 2019 was \$13.1 million and \$16.9 million, respectively. The decrease in interest expense was primarily due to the \$4.4 million decrease in interest expense incurred on the Scilex Pharma Notes issued in September 2018 partially offset by a \$0.6 million increase in interest expense related to related party notes with Sorrento during the year ended December 31, 2020.

### ***Interest Income***

Interest income for the years ended December 31, 2020 and 2019 was \$0 and \$0.5 million, respectively. The decrease in interest income was primarily due to lower cash balances during the year ended December 31, 2020.

### ***Income Tax (Benefit) Expense***

Income tax (benefit) expense for the years ended December 31, 2020 and 2019 was \$(53.0) thousand and \$2.0 thousand, respectively.

### ***Liquidity and Capital Resources***

As of September 30, 2022, we had cash and cash equivalents of \$2.5 million.

We have funded our operations primarily through the issuance of the Scilex Pharma Notes, related party notes with Sorrento, and the 2020 revolving credit facility. The following table summarizes the aggregate indebtedness of these issuances as of September 30, 2022, December 31, 2021, and December 31, 2020 (in thousands):

	September 30, 2022	December 31, 2021	December 31, 2020
Scilex Pharma Notes	\$ —	\$ 101,172	\$ 98,672
Related Party Notes with Sorrento	109,825	43,111	28,411
2020 Revolving Credit Facility	—	8,815	9,471
Deferred Consideration with Romeg	3,650	—	—
Total indebtedness	<u>\$ 113,475</u>	<u>\$ 153,098</u>	<u>\$ 136,554</u>

### ***Debt Financings***

#### ***Scilex Pharma Notes***

On June 2, 2022, Sorrento and the Company entered into a Consent Under and Amendment No. 4 with U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), as trustee (the "Trustee") and collateral agent (the "Agent"), and the beneficial owners of those certain senior secured notes due 2026 issued by Scilex Pharma in September 2018 (the "Scilex Pharma Notes") listed on the signature pages thereto (the "Holders"), which amended that certain Indenture, dated September 7, 2018, by and among Scilex Pharma, Sorrento, the Trustee and the Agent, as amended (the "Indenture").

Pursuant to the Amendment (1) on June 3, 2022, Scilex Pharma repurchased \$41.4 million of the aggregate principal amount of the outstanding Scilex Pharma Notes at 100% of the principal amount thereof, (2) the Holders agreed that Scilex Pharma can repurchase the remaining principal amount of the Scilex Pharma Notes at any time on or before September 30, 2022 for \$41.4 million (subject to reduction for any quarterly royalty payments) and upon such repurchase the Holders will forgive and discharge \$28.0 million of the aggregate principal amount of the Scilex Pharma Notes, (3) the minimum cash requirement under the Indenture was reduced to \$5.0 million in aggregate unrestricted cash equivalents at the end of each calendar month, and (4) the maximum aggregate principal amount of that certain intercompany promissory note issued by Scilex Pharma to Sorrento on October 5, 2018 was increased from up to \$25.0 million to up to \$50.0 million.

In August 2022, the Company made principal payments towards the outstanding Scilex Pharma Notes totaling \$1.7 million. On September 28, 2022, Scilex Pharma repurchased all of the outstanding aggregate principal amount of the Scilex Pharma Notes. As of immediately prior to the repurchase, the aggregate principal amount of the Scilex Pharma Notes was approximately \$67.7 million, and Scilex Pharma repurchased the Scilex Pharma Notes for an aggregate cash payment of \$39.7 million as the holders of the Scilex Pharma Notes forgave and discharged an aggregate of \$28.0 million of principal amount of the Scilex Pharma Notes in connection with the repurchase.

Quarterly principal payments, based on a percentage of projected net sales of ZTlido, optional and contingently accelerated repurchases, and the Early Paydown Provision under the Scilex Pharma Notes since January 1, 2021 are as follows (in thousands):

<b>Three Months Ended,</b>	<b>Principal Payments</b>
March 31, 2021*	\$ 21,267
June 30, 2021*	21,174
September 31, 2021	1,748
December 31, 2021	1,686
March 31, 2022	21,585
June 30, 2022*	42,970
September 30, 2022*	41,444
Total payments since January 1, 2021	<u>\$151,874</u>

\* Includes repurchase or Early Paydown Provision during the period (see Note 6 titled "Debt" to our consolidated financial statements elsewhere in the Form 8-K).

#### *ZTlido Royalties*

In addition to the quarterly royalty payment of net sales of ZTlido associated with the Indenture, Scilex Pharma is a party to the Product Development Agreement with the Developers, pursuant to which the Developers will manufacture and supply lidocaine tape products, including the Products, for Scilex Pharma. Pursuant to the Product Development Agreement, Scilex Pharma is required to make aggregate royalty payments between 25% and 35% to the Developers based on net profits. During the nine months ended September 30, 2022, Scilex Pharma made the first royalty payments in the amount of \$0.2 million. As of September 30, 2022, Scilex Pharma had ending balances of accrued royalty payables of \$2.1 million.

In the event that Scilex Pharma is in a net profit position, as defined in the Product Development Agreement, Scilex Pharma will first attempt to make aggregate royalty payments with cash generated from its operations. If these sources are insufficient, Scilex Pharma may seek to raise additional funds through equity offerings, debt financings, collaborations, government contracts or other strategic transactions.

### *Contingent Consideration*

We have \$280.0 million, \$13.0 million, and \$23.0 million in aggregate contingent consideration obligations in connection with the Merger of Semnur, Romeg license, and SP-104 acquisitions (see Note 3 titled “*Acquisitions*” to our consolidated financial statements included elsewhere in the Form 8-K for additional information), respectively, that are contingent upon achieving certain specified milestones or the occurrence of certain events. Contingent consideration obligations are comprised of regulatory milestones and additional payments that will be due upon the achievement of certain amounts of net sales (see Note 3 titled “*Acquisitions*” to our consolidated financial statements included elsewhere in the Form 8-K for additional information).

### *Deferred Consideration*

We have \$3.7 million of deferred consideration related to minimum royalty payments that were included in the initial measurement of consideration transferred for the GLOPERBA license (see Note 3 titled “*Acquisitions*” to our consolidated financial statements included elsewhere in the Form 8-K for additional information). Deferred consideration minimum royalty payments begin the first full quarter following June 14, 2023.

### ***Future Liquidity Needs***

We have based our anticipated operating capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources sooner than we expect. The amount and timing of our future funding requirements will depend on many factors, some of which are outside of our control, including but not limited to:

- the costs and expenses associated with our ongoing commercialization efforts for ZTlido and GLOPERBA;
- the degree of success we experience in commercializing ZTlido and GLOPERBA;
- the revenue generated by sales of ZTlido, GLOPERBA, and other products that may be approved, if any;
- the scope, progress, results and costs of conducting studies and clinical trials for our product candidates, SEMDEXA, SP-103, and SP-104;
- the timing of, and the costs involved in, obtaining regulatory approvals for our product candidates;
- the costs of manufacturing ZTlido, GLOPERBA and our product candidates;
- the timing and amount of any milestone, royalty or other payments we are required to make pursuant to any current or future collaboration or license agreements;
- our ability to maintain existing, and establish new, strategic collaborations, licensing or other arrangements and the financial terms of any such agreements, including the timing and amount of any future milestone, royalty or other payments due under any such agreement;

- the extent to which ZTlido, GLOPERBA, or any of our product candidates, if approved for commercialization, is adopted by the physician community;
- our need to expand our research and development activities;
- the costs of acquiring, licensing or investing in businesses, product candidates and technologies;
- the effect of competing products and product candidates and other market developments;
- the number and types of future products we develop and commercialize;
- any product liability or other lawsuits related to our products;
- the expenses needed to attract, hire and retain skilled personnel;
- the costs associated with being a public company;
- our need to implement additional internal systems and infrastructure, including financial and reporting systems;
- the costs of preparing, filing and prosecuting patent applications and maintaining, enforcing and defending intellectual property-related claims; and
- the extent and scope of our general and administrative expenses.

We cannot be certain that additional funding will be available on acceptable terms, or at all. If we raise additional funds by issuing equity or convertible debt securities, it could result in dilution to our existing stockholders or increased fixed payment obligations. In addition, as a condition to providing additional funds to us, future investors may demand, and may be granted, rights superior to those of existing stockholders. If we incur additional indebtedness, we could become subject to covenants that would restrict our operations and potentially impair our competitiveness, such as limitations on our ability to incur additional debt, limitations on our ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact our ability to conduct our business. Additionally, any future collaborations we enter into with third parties may provide capital in the near term but we may have to relinquish valuable rights to ZTlido, GLOPERBA, or our product candidates or grant licenses on terms that are not favorable to us. Any of the foregoing could significantly harm our business, financial condition and results of operations. If we are unable to raise additional capital in sufficient amounts or on terms acceptable to us, we may be required to reduce the scope of the commercialization of ZTlido and GLOPERBA or delay, scale back or discontinue the development of one or more of our product candidates.

We anticipate that we will continue to incur net losses into the foreseeable future as we support our clinical development to expand approved indications, continue our development of, and seek regulatory approvals for, our product candidates, and expand our corporate infrastructure. As a result, we have concluded that there is substantial doubt about our ability to continue as a going concern within one year after the date that the consolidated financial statements are issued. See Note 2 titled “*Liquidity and Going Concern*” to our consolidated financial statements included elsewhere in the Form 8-K for additional information. Proceeds from the Business Combination are dependent on the amount of redemptions by Vickers’s public shareholders. Net proceeds from this Business Combination, together with our existing cash and cash equivalents, may be insufficient to enable us to fund our operating expenses and capital expenditure requirements for at least the next 12 months. If these sources are insufficient to satisfy our liquidity requirements, we may seek to raise additional funds through equity offerings, debt financings, collaborations, government contracts or other strategic transactions.



## Cash Flows

The following table summarizes our cash flows for each of the periods presented:

	Year Ended December 31,			Nine Months Ended September 30,	
	2021	2020	2019	2022	2021
<b>Cash Flow Data:</b>					
Net cash used for operating activities	\$(28,664)	\$(31,461)	\$(60,421)	\$(20,533)	\$(22,707)
Net cash used for investing activities	—	(25)	(17,624)	(2,067)	—
Net cash provided by (used for) financing activities	28,163	(19,170)	15,776	20,745	22,073
Net change in cash and cash equivalents	<u>\$ (501)</u>	<u>\$(50,656)</u>	<u>\$(62,269)</u>	<u>\$ (1,855)</u>	<u>\$ (634)</u>

### Cash Flows from Operating Activities

For the year ended December 31, 2021, net cash used for operating activities was approximately \$28.7 million, primarily from our net loss of \$88.4 million offset by other non-cash reconciling items of \$46.1 million related to depreciation and amortization, principal increase to the Scilex Pharma Notes, stock-based compensation, non-cash operating lease cost, non-cash interest for debt issuance costs and debt discount, interest payments related to the debt discount on the Scilex Pharma Notes, net loss on debt extinguishment, and a loss on derivative liabilities, and by changes in operating assets and liabilities that provided \$13.6 million of cash.

For the year ended December 31, 2020, net cash used for operating activities was approximately \$31.5 million, primarily from our net loss of \$47.5 million, offset by other non-cash reconciling items of \$9.0 million related to depreciation and amortization, stock based compensation, non-cash operating lease cost, amortization of debt issuance costs and debt discount, interest on the Scilex Pharma Notes, and a gain on derivative liabilities, and changes in operating assets and liabilities of \$7.0 million of cash.

For the year ended December 31, 2019, net cash used for operating activities was approximately \$60.4 million, primarily from our net loss of \$178.6 million, which was offset by charges related to acquired IPR&D of \$75.3 million, a loss on derivative liability of \$23.3 million, other non-cash reconciling items of \$23.6 million related to depreciation and amortization, stock based compensation, non-cash operating lease cost and amortization of debt issuance costs and debt discount, and changes in operating assets and liabilities that used \$4.0 million of cash.

For the nine months ended September 30, 2022, net cash used for operating activities was approximately \$20.5 million, primarily from our net loss of \$5.5 million, other non-cash reconciling items of \$44.7 million related to depreciation and amortization, stock-based compensation, non-cash operating lease cost, non-cash interest for debt issuance costs and debt discount, interest payments related to the debt discount on the Scilex Pharma Notes, net gain on debt extinguishment, and a gain on derivative liabilities and offset by changes in operating assets and liabilities that provided \$29.7 million of cash.

For the nine months ended September 30, 2021, net cash used for operating activities was approximately \$22.7 million, primarily from our net loss of \$46.5 million, offset by other non-cash reconciling items of \$14.0 million related to depreciation and amortization, stock based compensation, non-cash operating lease cost, amortization of debt issuance costs and debt discount, interest on the Scilex Pharma Notes, net loss on debt extinguishment, and a net loss on derivative liabilities, and changes in operating assets and liabilities of \$9.8 million.

#### ***Cash Flows from Investing Activities***

For the year ended December 31, 2021, no cash was used for investing activities.

For the year ended December 31, 2020, net cash used for investing activities was approximately \$25.0 thousand, attributed to property and equipment purchases.

For the year ended December 31, 2019, net cash used for investing activities was approximately \$17.6 million, primarily attributed to approximately \$17.0 million of cash paid for the acquisition of Semnur-related IPR&D expenses and \$0.6 million of property and equipment purchases.

For the nine months ended September 30, 2022, net cash used for investing activities was approximately \$2.1 million attributed to cash paid for the acquisition of GLOPERBA licenses from Romeg and \$7.0 thousand attributed to cash paid for property, plant, and equipment.

For the nine months ended September 30, 2021, no cash was used for investing activities.

#### ***Cash Flows from Financing Activities***

For the year ended December 31, 2021, net cash provided by financing activities was approximately \$28.2 million and was primarily related to \$47.9 million in proceeds from related party payables, \$47.8 million in proceeds from the CNH Revolving Loan, \$14.7 million in proceeds from related party note payable with Sorrento, and offset by \$48.8 million repayment of the CNH Revolving Loan and \$33.4 million repayment of the Scilex Pharma Notes.

For the year ended December 31, 2020, net cash used by financing activities was approximately \$19.2 million and is primarily related to \$58.9 million repayment of the Scilex Pharma Notes, offset by \$18.4 million in proceeds from related party payables, \$11.0 million in proceeds from other loans, and \$10.3 million in proceeds from related party notes.

For the year ended December 31, 2019, net cash provided by financing activities was approximately \$15.8 million and is primarily related to \$16.6 million of related party note proceeds, which were utilized to finance the acquisition of Semnur, plus \$5.0 million of promissory note proceeds offset by repayment of the related party note payable of \$3.5 million and \$2.3 million repayment of the Scilex Pharma Notes.

For the nine months ended September 30, 2022, net cash provided by financing activities was approximately \$20.7 million and is primarily related to \$51.9 million in proceeds from related party payables, \$62.5 million in proceeds from related party note payables, \$9.9 million in proceeds from the CNH Revolving loan, \$96.0 thousand in proceeds from the exercise of stock options, offset by \$18.8 million repayment on CNH Revolving Loan and \$84.8 million repayment of the Scilex Pharma Notes.

For the nine months ended September 30, 2021, net cash provided by financing activities was approximately \$22.1 million and is primarily related to \$45.1 million in proceeds from related party payables, \$34.8 million in proceeds from the CNH Revolving Loan, and \$11.5 million in proceeds from related party notes, offset by a \$32.4 million repayment of the Scilex Pharma Notes and a \$36.9 million repayment on CNH Revolving Loan.

### **Critical Accounting Policies and Estimates**

This management's discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements which are prepared in accordance with GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets and liabilities and the reported amounts of revenue and expenses during the reporting period. We continually evaluate our estimates and judgments, the most critical of which are those related to derivative liabilities, income taxes and stock-based compensation and others listed below. We base our estimates and judgments on historical experience and other factors that we believe to be reasonable under the circumstances. Materially different results can occur as circumstances change and additional information becomes known.

While our significant accounting policies are described in greater detail in the audited financial statements for the years ended December 31, 2021 and 2020 included in the proxy statement/prospectus filed by Vickers with the SEC on October 28, 2022 beginning on page F-48 thereof, we believe the following accounting policies and estimates are most critical to aid in understanding and evaluating our reported financial results.

#### ***Revenue Recognition***

Our revenue to date has been generated from product sales of ZTlido. We do not have significant costs associated with obtaining contracts with our customers.

We recognize revenue when control of the products is transferred to the customers in an amount that reflects the consideration we expect to receive from the customers in exchange for those products. This process involves identifying the contract with a customer, determining the performance obligations in the contract and the contract price, allocating the contract price to the distinct performance obligations in the contract and recognizing revenue when the performance obligations have been satisfied. A performance obligation is considered distinct from other obligations in a contract when it provides a benefit to the customer either on its own or together with other resources that are readily available to the customer and is separately identified in the contract. We consider a performance obligation satisfied once we have transferred control of a good or service to the customer, meaning the customer has the ability to use and obtain the benefit of the good or service. We recognize revenue for satisfied performance obligations only when we determine there are no uncertainties regarding payment terms or transfer of control.

Revenue from product sales relates solely to sales of ZTlido. Our performance obligations with respect to sales of ZTlido are satisfied at a certain point in time, and we consider control to have transferred upon delivery to the customer. We consider control to have transferred upon delivery to the customer because, upon delivery, the customer has legal title to the asset, physical possession of the asset has been transferred to the customer, the customer has significant risks and rewards in connection with ownership of the asset, and we have a present right to payment from the customer at that time. Invoicing typically occurs upon shipment and the length of time between invoicing and the date on which payment is due is not significant.

For product sales, we record gross-to-net sales adjustments for commercial and government rebates, fees, and chargebacks, wholesaler and distributor fees, sales returns and prompt payment discounts. Such variable consideration is estimated in the period of the sale and is estimated using a most likely amount approach based primarily upon provisions included in our customer contracts, customary industry practices and current government regulations. Gross-to-net adjustments are generally recorded as contract liabilities under accrued expenses within our consolidated balance sheet.

#### *Rebates*

Rebates are discounts that we pay under either government or private health care programs. Government rebate programs include state Medicaid drug rebate programs, the Medicare coverage gap discount programs and the Tricare programs. Commercial rebate and fee programs relate to contractual agreements with commercial healthcare providers, under which we pay rebates and fees for access to and position on that provider's patient drug formulary. Rebates and chargebacks paid under government programs are generally mandated under law, whereas private rebates and fees are generally contractually negotiated with commercial healthcare providers. Both types of rebates vary over time. We record a reduction to gross product sales at the time the customer takes title to the product based on estimates of expected rebate claims. We monitor the sales trends and adjust for these rebates on a regular basis to reflect the most recent rebate experience and contractual obligations.

#### *Service Fees*

We compensate our customers and others in the distribution chain for wholesaler and distribution services. We have determined such services received to date are not distinct from our sale of products to the customers, and therefore, these payments have been recorded as a reduction of revenue.

#### *Product Returns*

We are obligated to accept the return of products sold that are damaged or do not meet certain specifications. We may authorize the return of products sold in accordance with the term of its sales contracts, and estimate allowances for such amounts at the time of sale. We estimate the amount of our product sales that may be returned by our customer and record this estimate as a reduction of revenue in the period the related product revenue is recognized. We currently estimate our product returns using historical trends and product return rates typically experienced in the industry.

#### *Co-payment Assistance*

Patients who have commercial insurance or pay cash and meet certain eligibility requirements may receive co-payment assistance. We accrue for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators.

#### *Derivative Liability*

Derivative liabilities are recorded on our consolidated balance sheets at their fair value on the date of issuance and are revalued on each balance sheet date until such instruments are exercised or expire, with changes in the fair value between reporting periods recorded as other income or expense.

Derivative liabilities result from the Scilex Pharma Notes. For the Scilex Pharma Notes, interest payments and repayments of the principal are based on a percentage of net sales of ZTlido and could be accelerated if certain net sales targets are not met or if marketing approval of SP-103, or a similar product with a lidocaine concentration of not less than 5%, is delayed or in the event of a qualified initial public offering. In estimating the fair value of such financial instruments, we may apply significant assumptions and estimates, including estimates involving future net product sales and timing and probability of marketing approvals and the probability of a qualified initial public offering event, which could be impacted in the future based on market conditions. As of December 31, 2021, the fair value of the derivative liabilities associated with the Scilex Pharma Notes was estimated using the discounted cash flow method combined with a Monte Carlo simulation model including consideration of the terms of Amendment No. 4 (see *Debt note*). *Significant Level 3 assumptions used in the measurement included a 6.2% risk adjusted net sales forecast and an effective debt yield of 15.0% on December 31, 2021.*

We perform a Level 3 based assessment to identify the embedded derivatives that require bifurcation from the Scilex Pharma Notes and separate accounting as a single compound derivative. Certain of these embedded features include default interest provisions, contingent rate increases, contingent put options, optional and automatic acceleration provisions and indemnified taxes. The Scilex Pharma Notes were fully extinguished in September 2022 and, as such, there were no remaining derivative liabilities as of September 30, 2022.

### ***Stock-Based Compensation***

We account for stock-based compensation in accordance with FASB ASC Topic 718 “*Compensation – Stock Compensation*”, which establishes accounting for equity instruments exchanged for employee and consulting services. Under such provisions, stock-based compensation cost is measured at the grant date, based on the calculated fair value of the award, and is recognized as an expense, under the straight-line-method, over the employee’s requisite service period (generally the vesting period of the equity grant) or non-employee’s vesting period.

For purposes of determining the inputs used in the calculation of stock-based compensation, we use historical data in estimating the expected terms of options and determine an estimate of option volatility based on an assessment of historical volatilities of comparable companies whose share prices are publicly available. We use these estimates as variables in the Black-Scholes option pricing model. Depending upon the number of stock options granted, any fluctuations in these calculations could have a material effect on the results presented in our consolidated statement of operations.

### ***Scilex Common Stock Valuation***

As there has been no public market for the Scilex Common Stock to date, the estimated fair value of the Scilex Common Stock was determined by the Scilex Board, considering our most recently available third-party valuations of the Scilex Common Stock and the Scilex Board’s assessment of additional objective and subjective factors that it believed were relevant, and factors that may have changed from the date of the most recent valuation through the date of the stock option grant. Prior to the Business Combination, given the absence of a public trading market for the Scilex Common Stock, the valuations of the Scilex Common Stock were determined in accordance with the “*American Institute of Certified Public Accountants Accounting and Valuation Guide, Valuation of Privately-Held Company Equity Securities Issued as Compensation.*” The Scilex Board exercised its reasonable judgment and considered numerous objective and subjective factors to determine the best estimate of fair value of the Scilex Common Stock, including:

- Independent valuations of the Scilex Common Stock performed at periodic intervals by an independent third-party valuation firm;
- The likelihood of achieving a liquidity event, such as an initial public offering or sale of the company and the potential value of a strategic merger or sale at different time points, given prevailing market conditions;

- Our historical operating and financial performance as well as our estimates of future financial performance, including the regulatory status of ZTlido and GLOPERBA and the timing and probability of continuing growth since commercialization of ZTlido and GLOPERBA under different operational scenarios;
- The status of research and development efforts;
- Our stage of development and commercialization and our business strategy;
- Industry information such as market trends and macro-economic events;
- Valuations of comparable companies;
- Adjustments to recognize a relative lack of marketability of the Scilex Common Stock; and
- Additional objective and subjective factors relating to our business.

The dates of our valuations have not always coincided with the dates of our stock option grants. In determining the exercise prices of the stock options at each grant date, the Scilex Board considered, among other things, the most recent valuations of the Scilex Common Stock and the Scilex Board's assessment of additional objective and subjective factors we believed were relevant as of the grant date. The additional factors considered when determining any changes in fair value between the most recent valuation and the grant dates included our operating and financial performance and current business conditions.

The assumptions underlying the valuations represented management's best estimate, which involved inherent uncertainties and the application of management's judgment. As a result, if we had used significantly different assumptions or estimates, the fair value of the Scilex Common Stock and Scilex's stock-based compensation expense could have been materially different.

#### *March 17 and March 31, 2019 Valuations*

For the valuation performed on March 17, 2019 and March 31, 2019, the fair value of the Scilex Common Stock was estimated using the market and income approaches. Scilex weighted a guideline public company method, a market approach that uses comparable company data and applies to the subject company, equally with a discounted cash flow method, an income approach that derives value by estimating reasonable future cash flows to the equityholders and discounting them to present value using a risk-adjusted discount rate. Scilex then used the Option Pricing Method ("OPM") to allocate the concluded equity value amongst the different equity classes and determine the value of Scilex Common Stock. These valuations resulted in a valuation of Scilex Common Stock of \$1.16 per share as of March 17, 2019 and March 31, 2019.

#### *May 31, 2019 Valuation*

For the valuation performed on May 31, 2019, the fair value of the Scilex Common Stock was estimated using a hybrid Probability Weighted Expected Return Method ("PWERM"), which estimates the value by probability-weighting different scenarios. Scilex used three going public scenarios and one stay-private scenario. For the three public scenarios, Scilex utilized recent comparable initial public offerings to estimate value, which was allocated on a fully diluted basis to derive a common stock value for each scenario. For the stay-private scenario, Scilex utilized the income and market approaches in line with the March 31, 2019 valuation and allocated the concluded equity value using an OPM to derive a common stock value for the stay-private scenario. Scilex then probability weighted (based on Scilex's best estimates at the time) each scenario's common stock value to arrive at the concluded value of the Scilex Common Stock. This valuation resulted in a valuation of Scilex Common Stock of \$1.16 per share as of May 31, 2019.

### *December 31, 2019 Valuation*

For the valuation performed on December 31, 2019, the fair value of the Scilex Common Stock was estimated using PWERM, which estimates the value by probability-weighting different scenarios. Scilex used three going public scenarios and one stay-private scenario. For the three public scenarios, Scilex utilized recent comparable initial public offerings to estimate value, which was allocated on a fully diluted basis to derive a common stock value for each scenario. For the stay-private scenario, Scilex utilized the income approach in line with the March 31, 2019 valuation and allocated the concluded equity value using an OPM to derive a common stock value for the stay-private scenario. Scilex then probability weighted (based on Scilex's best estimates at the time) each scenario's common stock value to arrive at the concluded value of the Scilex Common Stock. This valuation resulted in a valuation of the Scilex Common Stock of \$1.16 per share as of December 31, 2019.

### *July 31, 2020 Valuation*

For the valuation performed on July 31, 2020, the fair value of the Scilex Common Stock was estimated using PWERM, which estimates the value by probability-weighting different scenarios. Scilex used three going public scenarios and one stay-private scenario. For the three public scenarios, Scilex utilized recent comparable initial public offerings to estimate value, which was allocated on a fully diluted basis to derive a common stock value for each scenario. For the stay-private scenario, Scilex utilized the income approach in line with the March 31, 2019, May 31, 2019 and December 31, 2019 valuations and allocated the concluded equity value using an OPM to derive a common stock value for the stay-private scenario. Scilex then probability weighted (based on Scilex's best estimates at the time) each scenario's common stock value to arrive at the concluded value of the Scilex Common Stock. This valuation resulted in a valuation of the Scilex Common Stock of \$1.16 per share as of July 31, 2020.

Once a public trading market for the New Scilex Common Stock has been established in connection with the Closing of the Business Combination, it will no longer be necessary for the Vickers Board to estimate the fair value of the New Scilex Common Stock in connection with our accounting for granted stock options and other such awards we may grant, as the fair value of the New Scilex Common Stock will be determined based on the quoted market price of the New Scilex Common Stock.

### ***Debt***

We account for debt as liabilities measured at amortized cost and amortize the resulting debt discount from the allocation of proceeds to interest expense using the effective interest method over the expected term of the debt instrument. We consider whether there are any embedded features in the debt instruments that require bifurcation and separate accounting as derivative financial instruments pursuant to FASB, ASC, Topic 815, "*Derivatives and Hedging*."

We may enter financing arrangements, the terms of which involve significant assumptions and estimates, including future net product sales, in determining interest expense, as well as the classification between current and long-term portions. In estimating future net product sales, we assessed prevailing market conditions using various external market data against our anticipated sales and planned commercial activities as well as actual ZTlido sales as of the Scilex Pharma Note extinguishment. See Note 6 titled “*Debt*” to our consolidated financial statements appearing elsewhere in the Form 8-K and the section titled “*Certain Relationships and Related Party Transactions—Certain Transactions of Scilex—Indenture and Letter of Credit*” for a description of the Scilex Pharma Notes, which provide for repayments based on a percentage of net sales of ZTlido. Consequently, we imputed interest on the carrying value of the debt and recorded interest expense using an imputed effective interest rate. We reassessed the expected payments each reporting period and accounted for any changes through an adjustment to the effective interest rate on a prospective basis, with a corresponding impact to the classification of our current and long-term portions.

### ***Leases***

Beginning January 1, 2019, at the inception of a contractual agreement and at transition to the new lease standard, we determine whether the contract contains a lease by assessing whether there is an identified asset and whether the contract conveys the right to control the use of the identified asset in exchange for consideration over a period of time. If both criteria are met, we calculate the associated lease liability and corresponding right-of-use asset upon lease commencement using a discount rate based on a credit-adjusted secured borrowing rate commensurate with the term of the lease. Our lease terms may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for lease payments is recognized on a straight-line basis over the lease term.

### ***Income Taxes***

The provisions of ASC Topic 740-10, *Income Taxes—Overall*, address the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC Topic 740-10, we may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. We have determined that we have immaterial uncertain tax positions.

We account for income taxes using the asset and liability method to compute the differences between the tax basis of assets and liabilities and the related financial amounts, using currently enacted tax rates.

We have deferred tax assets, which are subject to periodic recoverability assessments. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount that more likely will not be realized. As of September 30, 2022 and December 31, 2021, we maintained a full valuation allowance against our deferred tax assets, with the exception of an amount equal to our deferred tax liabilities that are scheduled to reverse against Scilex’s deferred tax assets.

### ***Intangible Assets***

Intangible assets are carried at their initial valuation or acquisition price and amortized on a straight-line basis over the estimated useful lives of the assets. If the useful life is indefinite, we will re-evaluate the asset annually for impairment and make adjustments as necessary. Our patents were initially valued using the multi-period excess earnings method and the useful life of 15 years was determined by management based on the patent expiration date.



Our developed technology was valued based on a 15-year projection using the excess earnings approach. We commenced amortization of IPR&D upon commercialization of ZTlido in October 2018. We review our long-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the assets' book value to future net undiscounted cash flows that the assets are expected to generate to determine if a write-down to the recoverable amount is appropriate. If such assets are written down, an impairment will be recognized as the amount by which the book value of the asset group exceeds the recoverable amount. There have not been any impairment losses of long-lived assets through September 30, 2022.

### Goodwill

Goodwill, which has an indefinite useful life, represents the excess of cost over fair value of net assets acquired. Goodwill is reviewed for impairment at least annually during the fourth quarter, or more frequently if events occur indicating the potential for impairment. We have determined that only one reporting unit exists for examination under impairment review. During our goodwill impairment review, we may assess qualitative factors to determine whether it is more likely than not that the fair value of our reporting units are less than their carrying amounts, including goodwill. The qualitative factors include, but are not limited to, macroeconomic conditions, industry and market considerations, and the overall financial performance of our company. If, after assessing the totality of these qualitative factors, we determine that it is not more likely than not that the fair value of our reporting units are less than their carrying amounts, then no additional assessment is deemed necessary. Otherwise, we perform a quantitative goodwill impairment test. We may also elect to bypass the qualitative assessment in a period and elect to proceed to perform the quantitative goodwill impairment test. We performed our annual assessment for goodwill impairment in the fourth quarters of 2021, 2020, and 2019 and determined there was no impairment as of December 31, 2021, 2020 and 2019, respectively. No interim impairment test was considered necessary during the nine months ended September 30, 2022 as we believe that it is more likely than not that the fair value of our goodwill was in excess of the carrying value

### Acquired In-Process Research and Development Expense

We have acquired and may continue to acquire the rights to develop and commercialize new product candidates. The up-front payments to acquire a new drug compound or drug delivery device, as well as future milestone payments associated with asset acquisitions that do not meet the definition of derivative and are deemed probable to achieve the milestones, are immediately expensed as acquired IPR&D provided that the drug has not achieved regulatory approval for marketing and, absent obtaining such approval, have no alternative future use. The acquired IPR&D related to the asset acquisition of IPR&D from Semnur in March 2019.

### Material Cash Commitments

As of September 30, 2022, our contractual obligations are as follows (in thousands):

	Payments Due by Period				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating lease obligations <sup>(1)</sup>	1,790	215	1,575	—	—
Related Party Notes Payable <sup>(2)</sup>	109,825	47,108	62,717	—	—
Interest on Related Party Notes Payable <sup>(2)</sup>	11,760	11,760	—	—	—
Deferred Consideration with Romeg <sup>(3)</sup>	7,125	—	1,500	1,575	4,050
<b>Total financial obligations</b>	<b>\$ 130,500</b>	<b>\$ 59,083</b>	<b>\$ 65,792</b>	<b>\$ 1,575</b>	<b>\$ 4,050</b>

- (1) See Note 8 titled "Commitments and Contingencies" of the notes to our unaudited consolidated financial statements included elsewhere in the Form 8-K.

- (2) The related party notes payable and interest on related party notes payable were eliminated at the close of the Business Combination under the terms of the Debt Exchange Agreement. See Note 10 titled “*Related Party Transactions*” of the notes to our unaudited consolidated financial statements included elsewhere in the Form 8-K.
- (3) See Note 3 titled “*Acquisitions*” of the notes to our unaudited consolidated financial statements included elsewhere in the Form 8-K.

### **Recent Accounting Pronouncements**

In October 2021, the FASB issued ASU 2021-08, *Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers*, which requires an acquirer in a business combination to recognize and measure contract assets and contract liabilities in accordance with ASC Topic 606. ASU 2021-08 is effective for fiscal years beginning after December 15, 2022 and early adoption is permitted. The Company is evaluating the impact the standard will have on its consolidated financial statements.

In December 2019, the FASB issued ASU No. 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*. The amendments in this update simplify the accounting for income taxes by removing certain exceptions to the general principles in ASC Topic 740. The amendments also improve consistent application of and simplify U.S. GAAP for other areas of ASC Topic 740 by clarifying and amending existing guidance. The amendments in this update were effective for interim and annual periods for the Company beginning after December 15, 2020. The Company adopted the standard on January 1, 2021. The adoption of the standard had no impact on its consolidated financial statements.

### **Quantitative and Qualitative Disclosures About Market Risk**

#### ***Interest Rate Risk***

Our exposure to market risk is confined to our cash and cash equivalents and debt securities. We have cash and cash equivalents and invest primarily in high-quality money market funds, which we believe are subject to limited credit risk. Due to the low risk profile of our investments, an immediate 10% change in interest rates would not have a material effect on the fair market value of our portfolio. Additionally, all interest rates associated with our related party notes outstanding as of September 30, 2022 are capped, therefore we are not subject to interest rate risk.

#### ***Concentration Risk***

Prior to April 2, 2022, sales to our sole customer and third-party logistics distribution provider, Cardinal Health, represented 100% of our net revenue. On April 2, 2022, we announced the expansion of our direct distribution network to national and regional wholesalers and pharmacies. Cardinal Health will continue to provide traditional third-party logistics functions for us. Additionally, during the nine months ended September 30, 2022 and 2021, we purchased inventory from our sole supplier, Itochu. This exposes us to concentration of customer and supplier risk. We monitor the financial condition of our customers, limit our credit exposure by setting credit limits, and have not experienced any credit losses for the nine months ended September 30, 2022 and 2021. As we continue to expand the commercialization of our product, we are not limited to the current customer and have elected to expand our distribution network.

Beginning on April 1, 2022, we began selling ZTlido directly to three large distributors, McKesson Corporation, Cardinal Health, and AmerisourceBergen Corporation, as well as to numerous pharmacies. If we are unable to maintain a favorable relationship with Cardinal Health (or with any of our other two distributors), we expect that our revenue would decline and our business would be harmed as a result. We may be unable to control the timing of the delivery of ZTlido to distributors, and any financial uncertainty or loss of key logistic employees of Cardinal Health, as our only third-party logistics provider, may negatively impact our sales.

#### ***Off-Balance Sheet Arrangements***

We did not have, during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under applicable SEC rules.

## Related Party Transactions

For a description of our related party transactions, see the section titled “*Certain Relationships and Related Party Transactions — Certain Transactions of Scilex*” of the definitive proxy statement/prospectus filed by Vickers with the SEC on October 28, 2022.

## Emerging Growth Company

A “emerging growth company” as defined in the JOBS Act is eligible to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies. Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can elect to opt out of the extended transition period and comply with the requirements that apply to non-emerging growth companies but any such election to opt out is irrevocable. New Scilex has irrevocably elected not to avail itself of this exemption from new or revised accounting standards and, therefore, will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies. As a result, changes in rules of U.S. generally accepted accounting principles or their interpretation, the adoption of new guidance or the application of existing guidance to changes in New Scilex’s business could significantly affect New Scilex’s business, financial condition and results of operations.

In addition, we are in the process of evaluating the benefits of relying on the other exemptions and reduced reporting requirements provided by the JOBS Act. Subject to certain conditions set forth in the JOBS Act, as an emerging growth company we may take advantage of certain exemptions from various reporting requirements and other burdens that are otherwise applicable generally to public companies. These provisions include, but are not limited to:

- an exemption from compliance with the requirement to obtain an attestation and report from our auditors on the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act;
- an exemption from compliance with any new requirements adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotation;
- reduced disclosure about our executive compensation arrangements in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding non-binding advisory votes on executive compensation or golden parachute arrangements.

New Scilex will qualify and will remain as an emerging growth company until the earlier of (i) the last day of the fiscal year (a) following the fifth anniversary of the closing of the IPO, (b) in which New Scilex has total annual gross revenue of at least \$1.235 billion, or (c) in which New Scilex is deemed to be a large accelerated filer, which means the market value of the common equity of New Scilex that is held by non-affiliates equals or exceeds \$700 million as of the last business day of its most recently completed second fiscal quarter; and (ii) the date on which New Scilex has issued more than \$1.00 billion in non-convertible debt securities during the prior three-year period. References herein to “emerging growth company” have the meaning associated with it in the JOBS Act.

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**Smaller Reporting Company**

Smaller reporting companies may take advantage of certain reduced disclosure obligations, including, among other things, providing only two years of audited financial statements. Following the Business Combination, we expect that New Scilex will not be a smaller reporting company because it will be a majority-owned subsidiary of Sorrento.

## UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

Capitalized terms used but not defined herein have the same meaning as terms defined and included elsewhere in the Current Report on Form 8-K to which this Unaudited Pro Forma Condensed Combined Financial Information is attached as an exhibit (the "Form 8-K") and, if not defined in the Form 8-K, the definitive proxy statement/prospectus filed by Vickers with the U.S. Securities and Exchange Commission (the "SEC") on October 28, 2022.

The following unaudited pro forma condensed combined balance sheet as of September 30, 2022 and the unaudited pro forma condensed combined statements of operations for the year ended December 31, 2021 and nine months ended September 30, 2022 present the combined financial information of Vickers and Scilex after giving effect to the Business Combination and related adjustments described in the accompanying notes. Vickers and Scilex are collectively referred to herein as the "Companies," and the Companies, subsequent to the Business Combination, are referred to herein as "New Scilex."

The unaudited pro forma condensed combined financial information has been prepared in accordance with Article 11 of Regulation S-X, Pro Forma Financial Information, as amended by the final rule, Release 33 10786. The following unaudited pro forma condensed combined statements of operations for the year ended December 31, 2021 and nine months ended September 30, 2022 give pro forma effect to the Business Combination as if it had occurred on January 1, 2021. The unaudited pro forma condensed combined balance sheet as of September 30, 2022 gives pro forma effect to the Business Combination as if it was completed on September 30, 2022.

The unaudited pro forma condensed combined financial information are based on and should be read in conjunction with:

- the accompanying notes to the unaudited pro forma condensed combined financial information;
- the audited historical financial statements and the unaudited historical financial statements of each of Vickers and Scilex as of and for the year ended December 31, 2021, and as of and for the nine months ended September 30, 2022, respectively, and the related notes thereto, and;
- other information relating to Vickers and Scilex, including the disclosures contained in the sections titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations of Vickers*" and "*Management's Discussion and Analysis of Financial Condition and Results of Operations of Scilex*" and other financial information included elsewhere in and/or incorporated by reference into the Form 8-K.

The unaudited pro forma condensed combined financial statements have been presented for illustrative purposes only and do not necessarily reflect what the combined company's financial condition or results of operations would have been had the Business Combination occurred on the dates indicated. Further, the unaudited pro forma condensed combined financial information also may not be useful in predicting the future financial condition and results of operations of the combined company. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors. The unaudited pro forma adjustments represent management's estimates based on information available as of the date of these unaudited pro forma condensed combined financial statements and are subject to change as additional information becomes available and analyses are performed.

On March 17, 2022, Vickers entered into the Agreement and Plan of Merger (as amended on September 12, 2022, the "Merger Agreement") with Vantage Merger Sub Inc., a Delaware corporation and wholly owned subsidiary of Vickers ("Merger Sub"), and Scilex Holding Company, a Delaware corporation ("Scilex") under which Merger Sub was merged with and into Scilex with Scilex continuing as the surviving corporation and a wholly owned subsidiary of Vickers.

The closing of the Business Combination occurred on November 10, 2022 (the “Closing”), in which Vickers was renamed “Scilex Holding Company” (“New Scilex”). At the Closing, each outstanding share of Scilex Common Stock as of immediately prior to the time in which the Business Combination became effective as stated in the Merger Agreement (“Effective Time”) was exchanged for shares of New Scilex Common Stock and each outstanding share of Scilex Preferred Stock as of immediately prior to the Effective Time was exchanged for the right to receive (a) one share of New Scilex Series A Preferred Stock and (b) one-tenth of one share of New Scilex Common Stock. Each Scilex stock option outstanding immediately prior to the Effective Time was converted into a stock option to acquire a share of New Scilex Common Stock upon substantially the same terms and conditions with respect to existing vesting and termination-related provisions. On November 11, 2022, shares of New Scilex Common Stock and Public Warrants started trading on the Nasdaq Capital Market under the ticker symbols “SCLX” and “SCLXW,” respectively.

The aggregate consideration paid to the equityholders of Scilex upon the Closing of the Business Combination was 133,060,532 shares of New Scilex Common Stock. The unaudited pro forma condensed combined financial information contained herein incorporates the results of Vickers’s public shareholders having elected to redeem 8,576,838 shares of their public shares for \$89,884,677 in cash based upon actual redemptions as of the Closing.

**UNAUDITED PRO FORMA CONDENSED COMBINED BALANCE SHEET**

As of September 30, 2022

(in thousands, except share and per share amounts)

	As of September 30, 2022			
	<u>(Note 2)</u>	Scilex	Pro Forma	Pro Forma
	<u>Vickers</u>	<u>Holding</u>	<u>Adjustments</u>	<u>Combined</u>
	<u>Corp. I</u>	<u>Company</u>		
	<u>(Adjusted)</u>	<u>(Historical)</u>		
<b>Assets</b>				
<b>Current assets</b>				
Cash and cash equivalents	35	2,483	12,047	3(B) 5,643
			(5,190)	3(C)
			(2,533)	3(E)
			(1,199)	3(K)
Accounts receivable, net	—	17,474	—	17,474
Inventory	—	933	—	933
Prepaid expenses and other	131	10,583	(7,270)	3(E) 3,444
<b>Total current assets</b>	<b>166</b>	<b>31,473</b>	<b>(4,145)</b>	<b>27,494</b>
<b>Non-current assets</b>				
Property and equipment, net	—	782	—	782
Operating lease right-of-use asset	—	1,271	—	1,271
Intangibles, net	—	41,617	—	41,617
Goodwill	—	13,481	—	13,481
Long-term deposit	—	153	—	153
Cash and securities held in Trust Account	101,293	—	(89,246)	3(A) —
			(12,047)	3(B)
<b>Total assets</b>	<b>101,459</b>	<b>88,777</b>	<b>(105,438)</b>	<b>84,798</b>
<b>Liabilities and Stockholders' Equity</b>				
<b>Current liabilities</b>				
Accounts payable	—	11,684	(6,862)	3(G) 4,822
Accrued payroll	—	1,426	—	1,426
Accrued expenses	809	23,862	1,752	3(E) 24,948
			(1,475)	3(G)
Current portion of debt	—	133	—	133
Related party payable	—	166,145	8,337	3(G) —
			(174,482)	3(H)
Related party note payable	—	47,108	(47,108)	3(H) —
Current portion of operating lease liabilities	—	717	—	717
<b>Total current liabilities</b>	<b>809</b>	<b>251,075</b>	<b>(219,838)</b>	<b>32,046</b>

	As of September 30, 2022			
	(Note 2) Vickers Vantage Corp. I (Adjusted)	Scilex Holding Company (Historical)	Pro Forma Adjustments	Pro Forma Combined
<b>Non-current liabilities</b>				
Mandatorily redeemable ordinary shares liability	—	—	—	—
Long-term debt, net of discount	—	3,517		3,517
Related party note payable	5,007	62,717	(62,717)	—
			(5,007)	3(I)
Derivative liabilities	1,163	—	(465)	3(J)
Operating lease liabilities	—	863	—	863
Deferred underwriting fee payable	5,190	—	(5,190)	3(C)
<b>Total liabilities</b>	<u>12,169</u>	<u>318,172</u>	<u>(293,217)</u>	<u>37,124</u>
Commitments and contingencies				
Ordinary shares subject to possible redemption 9,726,395 and 13,800,000 as of September 30, 2022 and December 31, 2021 at redemption value of approximately \$10.41 and \$10.00, respectively, per share	101,293	—	(101,293)	3(A)
Stockholders' deficit				
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued or outstanding	—	—	—	—
Ordinary shares, \$0.0001 par value; 200,000,000 shares authorized; 3,450,000 non-redeemable shares issued and outstanding at September 30, 2022 and December 31, 2021	—	—	—	—
New Scilex Preferred stock, \$0.0001 par value; 45,000,000 shares authorized	—	—	3	3(H)
			—	
New Scilex Common stock, \$0.0001 par value; 740,000,000 shares authorized	—	—	—	3(A)
			13	3(D)
			—	
			—	
Preferred stock, \$0.0001 par value, 20,000,000 shares authorized; none issued or outstanding at September 30, 2022 and December 31, 2021	—	—	—	—
Common stock, \$0.0001 par value, 350,000,000 shares authorized; 197,566,338 and 197,266,338 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	—	20	(20)	3(D)
Additional paid-in capital	—	128,615	12,047	3(A)
			7	3(D)
			(10,532)	3(E)
			(12,793)	3(F)
			284,304	3(H)
			5,007	3(I)
			465	3(J)
Accumulated deficit	(12,003)	(358,030)	(1,023)	3(E)
			(1,199)	3(K)
			(12,793)	3(F)
<b>Total stockholders' deficit</b>	<u>(12,003)</u>	<u>(229,395)</u>	<u>289,072</u>	<u>47,674</u>
<b>Total liabilities and stockholders' deficit</b>	<u>101,459</u>	<u>88,777</u>	<u>(105,438)</u>	<u>84,798</u>



**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**

**For the Nine Months Ended September 30, 2022**

**(in thousands, except share and per share amounts)**

	<b>For the Nine Months Ended September 30, 2022</b>			
	<u>(Note 2)</u>			
	<u>Vickers Vantage Corp. I (Adjusted)</u>	<u>Scilex Holding Company (Historical)</u>	<u>Pro Forma Adjustments</u>	<u>Pro Forma Combined</u>
<b>Net revenue</b>	—	26,115	—	26,115
<b>Operating costs and expenses:</b>				
Cost of revenue	—	6,284	—	6,284
Research and development	—	6,457	—	6,457
Selling, general and administrative	—	41,371	—	41,371
Intangible amortization	—	2,896	—	2,896
Operating and formation costs	2,412	—	(690)	1,722
<b>Total operating costs and expenses</b>	<b>2,412</b>	<b>57,008</b>	<b>(690)</b>	<b>58,730</b>
<b>Loss from operations</b>	<b>(2,412)</b>	<b>(30,893)</b>	<b>690</b>	<b>(32,615)</b>
<b>Other expense (income):</b>				
Gain on derivative liabilities	(2,196)	(5,300)	(878)	(8,374)
Gain on debt extinguishment, net	—	(28,634)	—	(28,634)
Scilex Pharma Notes principal increase	—	—	—	—
Interest expense	17	8,596	—	8,613
Loss on foreign currency exchange	—	(39)	—	(39)
Interest income on mandatorily redeemable ordinary shares liability	(192)	—	192	—
Interest earned on investments held in Trust Account	(665)	—	665	—
<b>Total other expense</b>	<b>(3,036)</b>	<b>(25,377)</b>	<b>(21)</b>	<b>(28,434)</b>
<b>Loss before income taxes</b>	<b>624</b>	<b>(5,516)</b>	<b>711</b>	<b>(4,181)</b>
Income tax expense	—	(36)	—	(36)
<b>Net loss</b>	<b>624</b>	<b>(5,480)</b>	<b>711</b>	<b>(4,145)</b>
Weighted-average shares used to compute net loss per share attributable to Vickers ordinary shares, basic	15,862,288			
Basic net loss per share of Vickers ordinary shares	0.04			
Weighted-average shares used to compute net loss per share attributable to Vickers ordinary shares, diluted	15,862,288			
Diluted net loss per share of Vickers ordinary shares	0.04			
Weighted-average shares used to compute net loss per share attributable to Scilex common stock, basic and diluted		197,549,794		
Basic and diluted net loss per share of Scilex common stock		(0.03)		
Weighted-average shares used to compute net loss per share attributable to New Scilex common stockholders, basic and diluted				141,098,856
Basic and diluted net loss per share of New Scilex common stock				(0.03)

**UNAUDITED PRO FORMA CONDENSED COMBINED STATEMENT OF OPERATIONS**

**For the Year Ended December 31, 2021**

**(in thousands, except share and per share amounts)**

	<b>For the Year Ended December 31, 2021</b>			
	<u>(Note 2)</u> Vickers Vantage Corp. I (Adjusted)	Scilex Holding Company (Historical)	Pro Forma Adjustments	Pro Forma Combined
<b>Net revenue</b>	—	31,317	—	31,317
<b>Operating costs and expenses:</b>				
Cost of revenue	—	3,634	—	3,634
Research and development	—	9,201	—	9,201
Selling, general and administrative	—	50,582	(233)	51,701
			153	4(DD)
			1,199	4(EE)
Intangible amortization	—	3,738	—	3,738
Operating and formation costs	1,005	—	(100)	905
<b>Total operating costs and expenses</b>	<b>1,005</b>	<b>67,155</b>	<b>(1,019)</b>	<b>69,179</b>
<b>Loss from operations</b>	<b>(1,005)</b>	<b>(35,838)</b>	<b>(1,019)</b>	<b>(37,862)</b>
<b>Other (income) expense:</b>				
(Gain) loss on derivative liabilities	(1,791)	300	716	4(CC) (775)
Loss on debt extinguishment, net	—	12,463	—	12,463
Scilex Pharma Notes principal increase	—	28,000	—	28,000
Interest expense	32	11,764	—	11,796
Loss on foreign currency exchange	—	54	—	54
Interest earned on investments held in Trust Account	(31)	—	31	4(AA) —
<b>Total other (income) expense</b>	<b>(1,790)</b>	<b>52,581</b>	<b>747</b>	<b>51,538</b>
<b>Gain (loss) before income taxes</b>	<b>785</b>	<b>(88,419)</b>	<b>(1,766)</b>	<b>(89,400)</b>
Income tax expense	—	5	—	5
<b>Net income (loss)</b>	<b>785</b>	<b>(88,424)</b>	<b>(1,766)</b>	<b>(89,405)</b>
Weighted-average shares used to compute net income per share attributable to Vickers ordinary shares, basic	16,820,548			
Basic net income per share of Vickers ordinary shares	0.05			
Weighted-average shares used to compute net income per share attributable to Vickers ordinary shares, diluted	16,834,110			
Diluted net income per share of Vickers ordinary shares	0.05			
Weighted-average shares used to compute net loss per share attributable to Scilex common stock, basic and diluted		197,266,338		
Basic and diluted net loss per share of Scilex common stock		(0.45)		
Weighted-average shares used to compute net loss per share attributable to New Scilex common stockholders, basic and diluted				141,098,856
Basic and diluted net loss per share of New Scilex common stock				(0.63)

**Note 1 - Description of the Business Combination**

On March 17, 2022, Vickers entered into the Merger Agreement with Merger Sub and Scilex. Pursuant to the Merger Agreement, subject to the terms and conditions set forth therein, Merger Sub merged with and into Scilex and with Scilex becoming a wholly owned subsidiary of Vickers. After giving effect to the Business Combination, Vickers owned all of the issued and outstanding equity interests of Scilex and its subsidiaries. In connection with the consummation of the Business Combination, Vickers was renamed as “Scilex Holding Company” (“New Scilex”).

At the Closing, each outstanding share of Scilex Common Stock as of immediately prior to the time the Business Combination became effective as stated in the Merger Agreement was exchanged for shares of New Scilex Common Stock and each outstanding share of Scilex Preferred Stock as of immediately prior to the Effective Time was exchanged for the right to receive (a) one share of New Scilex Series A Preferred Stock and (b) one-tenth of one share of New Scilex Common Stock. Each Scilex stock option outstanding immediately prior to the Effective Time was converted into a number of options exercisable for newly issued shares of New Scilex Common Stock based upon the Exchange Ratio and on substantially the same terms and conditions with respect to existing vesting and termination-related provisions. The exercise price per share for each option for New Scilex Common Stock is equal to (i) the existing exercise price per Scilex stock option, divided by (ii) the Exchange Ratio (defined below) (rounded up to the nearest whole cent).

The number of shares of New Scilex Common Stock issuable to Scilex stockholders and optionholders is equal to (i) \$1,500,000,000, minus (ii) the Specified Indebtedness Amount (defined below), divided by \$10 (“Merger Consideration”). The “Specified Indebtedness Amount” had pertained to the aggregate amount owed by Scilex in respect of senior secured notes due 2026 issued under Scilex Pharmaceuticals Inc. (“Scilex Pharma”) and with Sorrento as the parent guarantor. On September 28, 2022, Scilex Pharma repurchased all of the outstanding aggregate principal amount of the Scilex Pharma Notes. As of immediately prior to the repurchase, the aggregate principal amount of the Scilex Pharma Notes was approximately \$67.7 million, and Scilex Pharma repurchased the Scilex Pharma Notes for an aggregate cash payment of \$39.7 million as the holders of the Scilex Pharma Notes forgave and discharged an aggregate of \$28.0 million of principal amount of the Scilex Pharma Notes in connection with the repurchase. This repurchase reduced the Specified Indebtedness Amount to \$0, resulting in Merger Consideration transferred to Scilex common stockholders and optionholders at Closing of 150,000,000 shares of New Scilex Common Stock.

Shares of Scilex Common Stock and Scilex stock options were converted into shares of New Scilex Common Stock and options to acquire shares of New Scilex Common Stock, respectively, in each case based on the “Exchange Ratio,” which is equal to (a) the number of shares constituting the Merger Consideration, divided by (b) the sum of (i) issued and outstanding Scilex Common Stock and (ii) issued and outstanding Scilex stock options as of immediately prior to the Effective Time. As there were 197,566,338 and 25,151,428 shares of Scilex Common Stock and Scilex stock options, respectively, the Exchange Ratio was calculated to be 0.673498. Upon the Effective Time, 133,060,532 shares of New Scilex Common Stock were transferred to Scilex stockholders as part of the Merger Consideration. The remaining portion of the Merger Consideration, equal to 16,939,379 shares of New Scilex Common Stock, is reserved for the Scilex optionholders.

On September 12, 2022, Scilex and Scilex Pharma entered into a Contribution and Satisfaction of Indebtedness Agreement (the “Debt Exchange Agreement”) with Sorrento, pursuant to which (i) Sorrento contributed to Scilex all amounts (including accrued interest thereon, if any) for certain loans and other amounts provided by Sorrento to Scilex and Scilex Pharma that remained outstanding as of immediately prior to the Closing of the Business Combination (the “Aggregate Outstanding Amount” or “Outstanding Indebtedness,”) in exchange for the issuance by Scilex to Sorrento of preferred stock of Scilex, (ii) Scilex contributed to Scilex Pharma the portion of such Outstanding Indebtedness that is owed by Scilex Pharma to Sorrento as a contribution of capital for no consideration, and (iii) upon the occurrence of the events described in clauses (i) and (ii), the Aggregate Outstanding Amount and the Outstanding Indebtedness was deemed satisfied in full.

Pursuant to the terms of the Debt Exchange Agreement effective as of immediately prior to, and contingent upon, the Closing of the Business Combination, Sorrento elected to contribute the Outstanding Indebtedness to Scilex in exchange for the issuance by Scilex to Sorrento of that number of shares of preferred stock, par value \$0.0001 per share, of Scilex (subject to adjustment for recapitalizations, stock splits, stock dividends and similar transactions) (the “Exchange Shares” and such transaction, the “Debt Contribution”) that was equal to (i) the Aggregate Outstanding Amount plus the amount equal to 10% of the Aggregate Outstanding Amount divided by (ii) \$11.00 (rounded up to the nearest whole share). In addition, prior to the Closing, Scilex entered into agreements with certain creditors and Sorrento in which Scilex was legally released from being the primary obligor under certain liabilities from the creditors. The obligations to these creditors were transferred to Sorrento. Immediately prior to the Closing, the total amount of liabilities transferred from Scilex to Sorrento was \$11,880,945, which were also subject to the Debt Exchange Agreement. The Aggregate Outstanding Amount subject to this conversion at Closing was \$290,570,964 which was converted to aggregate number of shares of Scilex Preferred Stock issued to Sorrento prior to the Effective Time pursuant to the Debt Exchange Agreement of 29,057,097 shares and then at the Effective Time such shares were exchanged for 29,057,097 shares of New Scilex Series A Preferred Stock and 2,905,710 shares of New Scilex Common Stock.

On October 17, 2022, Sorrento and Scilex entered into a letter agreement (the “Funding Commitment Letter”). Pursuant to the terms of the Funding Commitment Letter, to the extent necessary to satisfy the closing condition in the Merger Agreement that requires the combined company to have \$5,000,001 in net tangible assets as of immediately following the time in which the Business Combination becomes effective (the “Net Tangible Assets Condition”), Sorrento would fund one or more loans to Scilex up to (a) \$10,000,000 and (b) an amount that, when taken together with all other Outstanding Indebtedness, will result in the Aggregate Outstanding Amount equaling \$310,000,000. At Closing, New Scilex was able to achieve the Net Tangible Assets Condition without requiring a loan from Sorrento under the Funding Commitment Letter. As such, no amount was requested by Scilex under the Funding Commitment Letter.

The table below illustrates the number of shares of New Scilex Series A Preferred Stock and New Scilex Common Stock held by Scilex stockholders at the Closing.

	<u>New Scilex Series A Preferred Stock</u>	<u>New Scilex Common Stock</u>
(a) Merger Consideration	—	133,060,532
(b) Aggregate Outstanding Amount converted under the Debt Exchange Agreement	29,057,097	2,905,710
<b>Total</b>	<b>29,057,097</b>	<b>135,966,242</b>

Each of the then-outstanding Public Warrants and Private Placement Warrants has an exercise price of \$11.50 per share (the “Exercise Price”) to acquire one share of Vickers Ordinary Shares. The exercise price of the warrants is subject to a down-round provision that is only effective prior to the Closing of the Business Combination and is therefore not, on its own, considered to have an impact to the classification of warrant on Scilex’s Unaudited Pro Forma Condensed Combined Balance Sheet. Concurrently with the execution of the Merger Agreement, Vickers also entered into the Sponsor Support Agreement. In the event that Vickers’s public shareholders exercise redemption rights that results in the redemption of 75% or more of the issued and outstanding Vickers Ordinary Shares as were outstanding as of March 17, 2022, the Sponsors agreed to be subject to a 40% forfeiture of Private Placement Warrants held by each Sponsor immediately prior to Closing. At Closing, actual redemption was 91.7% and therefore 40% of the Private Placement Warrants were forfeited pursuant to the Sponsor Support Agreement.

On October 17, 2022, as consideration for Sorrento agreeing to provide funding, as necessary, under the Funding Commitment Letter, Vickers, the Sponsors, Sorrento and Maxim entered into the Warrant Transfer Agreement pursuant to which, if, prior to the consummation of the Business Combination, the public shareholders have redeemed 50% or more of the public Vickers Ordinary Shares as were outstanding as of March 17, 2022, then in addition to the forfeiture of Warrants by the Sponsors contemplated by the Sponsor Support Agreement, the Sponsors will transfer to Sorrento, and Sorrento will acquire all rights, title and interest in and to all or a portion of the Private Placement Warrants (as equitably adjusted from time to time in respect of any change in the outstanding Vickers Ordinary Shares into a different number, class or series, including by reason of any reclassification, recapitalization, share split (including a reverse share split), or combination, exchange, readjustment of shares, or similar transaction, or any share dividend or distribution paid in shares) pursuant to the Warrant Transfer Agreement. Actual redemptions were 91.7% at Closing, which resulted in 3,104,000 Private Placement Warrants being transferred to Sorrento and 1,000,000 Private Placement Warrants being retained by Sponsors pursuant to the Warrant Transfer Agreement.

In addition, on October 17, 2022, Vickers and the Sponsors entered into the Vickers Debt Agreement, pursuant to which the Working Capital Loans will be cancelled in exchange for the issuance of common stock, par value \$0.0001, of Vickers prior to the consummation of the Business Combination. Pursuant to the terms of the Vickers Debt Agreement, the aggregate amount of Working Capital Loans at Closing of \$5,330,557 was converted to 533,057 shares of New Scilex Common Stock.

The following summarizes the pro forma ownership and voting power of New Scilex Common Stock and New Scilex Series A Preferred Stock, excluding the potentially dilutive effect of all the Public Warrants, the Private Placement Warrants, any Working Capital Warrants and all outstanding New Scilex stock options issued to Scilex option holders in connection with the Business Combination:

	Shares of Common Stock	% of Ownership	Shares of Preferred Stock	% of Ownership	% of Voting Power
Vickers public shareholders	1,149,557	0.8%	—		0.7%
Vickers initial shareholders	3,983,057	2.8%	—		2.3%
Scilex common stockholders	135,966,242	96.4%	—		79.9%
Scilex preferred stockholders			29,057,097	100%	17.1%
<b>Total Shares at the Closing</b>	<b>141,098,856</b>	<b>—</b>	<b>29,057,097</b>		<b>170,155,953</b>

#### ***Expected Accounting Treatment for the Business Combination***

The Business Combination was accounted for as a reverse recapitalization, with no goodwill or other intangible assets recorded in accordance with GAAP. Under this method of accounting, Vickers was treated as the “acquired” company for financial reporting purposes. Accordingly, the Business Combination was treated as the equivalent of Scilex issuing stock for the net assets of Vickers, accompanied by a recapitalization. The net assets of Vickers will be recognized at historical cost, with no goodwill or other intangible assets recorded.

Scilex was determined to be the accounting acquirer based on evaluation of the following facts and circumstances:

- Scilex stockholders have the majority of the voting power;
- Scilex appointed the majority of the board of directors of New Scilex;
- Scilex’s existing management comprise the management of New Scilex;
- Scilex comprise the ongoing operations of New Scilex;
- Scilex is the larger entity based on historical revenues and business operations; and
- New Scilex assumes Scilex’s name.

#### **Note 2 - Accounting Policies**

As part of preparing these unaudited pro forma condensed combined financial statements, certain reclassifications were made to align Vickers and Scilex’s financial statement presentation. Following the consummation of the Business Combination, we are performing a comprehensive review of the two entities’ accounting policies. As a result of the review, we may identify differences between the accounting policies of the two entities which, when conformed, could have a material impact on the financial statements of the post-combination company. Based on our initial analysis, we did not identify any differences that would have a material impact on the unaudited pro forma condensed combined financial information. As a result, the unaudited pro forma condensed combined financial information does not assume any differences in accounting policies.

	As of September 30, 2022		
	Vickers Vantage Corp. I (Historical)	Reclassification Adjustments	Vickers Vantage Corp. I (Adjusted)
<b>Assets</b>			
<b>Current assets</b>			
Cash and cash equivalents	35	—	35
Accounts receivable, net	—	—	—
Inventory	—	—	—
Prepaid expenses and other	—	131	131
Prepaid expenses	131	(131)	—
<b>Total current assets</b>	<b>166</b>	<b>—</b>	<b>166</b>
<b>Non-current assets</b>			
Property and equipment, net	—	—	—
Operating lease right-of-use asset	—	—	—
Intangibles, net	—	—	—
Goodwill	—	—	—
Long-term deposit	—	—	—
Cash and securities held in Trust Account	101,293	—	101,293
<b>Total assets</b>	<b>101,459</b>	<b>—</b>	<b>101,459</b>
<b>Liabilities and Stockholders' Equity</b>			
<b>Current liabilities</b>			
Accounts payable	—	—	—
Accrued payroll	—	—	—
Accrued expenses	—	809	809
Accounts payable and accrued expenses	809	(809)	—
Current portion of debt	—	—	—
Related party payable	—	—	—
Related party note payable	—	—	—
Current portion of operating lease liabilities	—	—	—
<b>Total current liabilities</b>	<b>809</b>	<b>—</b>	<b>809</b>
<b>Non-current liabilities</b>			
Mandatorily redeemable ordinary shares liability	—	—	—
Long-term debt, net of discount	—	—	—
Related party note payable	—	5,007	5,007
Derivative liabilities	—	1,163	1,163
Operating lease liabilities	—	—	—
Convertible note—related party, net of debt discount	5,007	(5,007)	—
Conversion option liability	—	—	—
Warrant liability	1,163	(1,163)	—
Deferred underwriting fee payable	5,190	—	5,190
<b>Total liabilities</b>	<b>12,169</b>	<b>—</b>	<b>12,169</b>
<b>Commitments and contingencies</b>			
Ordinary shares subject to possible redemption 9,726,395 and 13,800,000 as of September 30, 2022 and December 31, 2021 at redemption value of approximately \$10.41 and \$10.00, respectively, per share	101,293	—	101,293

	As of September 30, 2022		
	Vickers Vantage Corp. I (Historical)	Reclassification Adjustments	Vickers Vantage Corp. I (Adjusted)
<b>Stockholders' deficit</b>			
Preference shares, \$0.0001 par value; 1,000,000 shares authorized; none issued or outstanding	—	—	—
Ordinary shares, \$0.0001 par value; 200,000,000 shares authorized; 3,450,000 non-redeemable shares issued and outstanding at September 30, 2022 and December 31, 2021	—	—	—
New Scilex Preferred stock, \$0.0001 par value; 45,000,000 shares authorized	—	—	—
New Scilex Common stock, \$0.0001 par value; 740,000,000 shares authorized	—	—	—
Common stock, \$0.0001 par value, 350,000,000 shares authorized; 197,566,338 and 197,266,338 shares issued and outstanding at September 30, 2022 and December 31, 2021, respectively	—	—	—
Additional paid-in capital	—	—	—
Accumulated deficit	(12,003)	—	(12,003)
<b>Total stockholders' deficit</b>	<b>(12,003)</b>	<b>—</b>	<b>(12,003)</b>
<b>Total liabilities and stockholders' deficit</b>	<b>101,459</b>	<b>—</b>	<b>101,459</b>



	For the Nine Months ended September 30, 2022		
	Vickers Vantage Corp. I (Historical)	Reclassification Adjustments	Vickers Vantage Corp. I (Adjusted)
<b>Net revenue</b>	—	—	—
<b>Operating costs and expenses:</b>			
Cost of revenue	—	—	—
Research and development	—	—	—
Selling, general and administrative	—	—	—
Intangible amortization	—	—	—
Operating and formation costs	2,412	—	2,412
<b>Total operating costs and expenses</b>	<b>2,412</b>	<b>—</b>	<b>2,412</b>
<b>Loss from operations</b>	<b>(2,412)</b>	<b>—</b>	<b>(2,412)</b>
<b>Other expense (income):</b>			
Loss on derivative liabilities	—	(2,196)	(2,196)
Gain on debt extinguishment, net	—	—	—
Scilex Pharma Notes principal increase	—	—	—
Interest expense	—	17	17
Loss on foreign currency exchange	—	—	—
Change in fair value of warrant liability	(2,189)	2,189	—
Loss on initial issuance of private warrants	—	—	—
Change in fair value of conversion option liability	(7)	7	—
Interest expense—debt discount	17	(17)	—
Transaction costs allocated to warrant liabilities	—	—	—
Interest income on mandatorily redeemable ordinary shares liability	(192)	—	(192)
Interest earned on investments held in Trust Account	(665)	—	(665)
<b>Total other expense</b>	<b>(3,036)</b>	<b>—</b>	<b>(3,036)</b>
<b>Loss before income taxes</b>	<b>624</b>	<b>—</b>	<b>624</b>
Income tax expense	—	—	—
<b>Net loss</b>	<b>624</b>	<b>—</b>	<b>624</b>
Weighted-average shares used to compute net loss per share attributable to Vickers ordinary shares, basic	15,862,288		15,862,288
Basic net loss per share of Vickers ordinary shares	0.04		0.04
Weighted-average shares used to compute net loss per share attributable to Vickers ordinary shares, diluted	15,862,288		15,862,288
Diluted net loss per share of Vickers ordinary shares	0.04		0.04

	For the Year Ended December 31, 2021		
	Vickers Vantage Corp. I (Historical)	Reclassification Adjustments	Vickers Vantage Corp. I (Adjusted)
<b>Net revenue</b>	—	—	—
<b>Operating costs and expenses:</b>			
Cost of revenue	—	—	—
Research and development	—	—	—
Selling, general and administrative	—	—	—
Intangible amortization	—	—	—
Operating and formation costs	1,005	—	1,005
<b>Total operating costs and expenses</b>	<b>1,005</b>	<b>—</b>	<b>1,005</b>
<b>Loss from operations</b>	<b>(1,005)</b>	<b>—</b>	<b>(1,005)</b>
<b>Other (income) expense:</b>			
Gain on derivative liabilities	—	(1,791)	(1,791)
Loss on debt extinguishment, net	—	—	—
Scilex Pharma Notes principal increase	—	—	—
Interest expense	—	32	32
Loss on foreign currency exchange	—	—	—
Change in fair value of warrants	(4,378)	4,378	—
Loss on initial issuance of private warrants	2,599	(2,599)	—
Change in fair value of conversion option liability	(12)	12	—
Interest expense—debt discount	2	(2)	—
Transaction costs allocated to warrant liabilities	30	(30)	—
Interest earned on investments held in Trust Account	(31)	—	(31)
<b>Total other income</b>	<b>(1,790)</b>	<b>—</b>	<b>(1,790)</b>
<b>Gain before income taxes</b>	<b>785</b>	<b>—</b>	<b>785</b>
Income tax expense	—	—	—
<b>Net income</b>	<b>785</b>	<b>—</b>	<b>785</b>
Weighted-average shares used to compute net income per share attributable to Vickers ordinary shares, basic	16,820,548		16,820,548
Basic net income per share of Vickers ordinary shares	0.05		0.05
Weighted-average shares used to compute net income per share attributable to Vickers ordinary shares, diluted	16,834,110		16,834,110
Diluted net income per share of Vickers ordinary shares	0.05		0.05

### Note 3 - Transaction Adjustments to Unaudited Pro Forma Condensed Combined Balance Sheet as of September 30, 2022

The unaudited pro forma condensed combined financial information does not give effect to any anticipated synergies, operating efficiencies, tax savings, or cost savings that may be associated with the Business Combination. No tax adjustment has been computed for the pro forma New Scilex financial results, as it expects to maintain a full valuation allowance against its U.S. deferred tax assets. The unaudited pro forma information does not purport to project the future financial position or operating results of New Scilex. The pro forma transaction adjustments included in the unaudited pro forma condensed combined balance sheet as of September 30, 2022 are as follows:

(A) Reflects reclassification of Vickers Ordinary Shares to permanent equity upon consummation of the Business Combination, after final redemption.

- (B) Reflects release of the restricted investments and cash held in the Trust Account upon consummation of the Business Combination.
- (C) Reflects the settlement in cash of all deferred underwriting fees payable to Maxim. A reduction of \$5.2 million was reflected in cash and cash equivalents.
- (D) Reflects the conversion of Scilex Common Stock into New Scilex Common Stock pursuant to the Merger Agreement.
- (E) Represents transaction costs incurred by Vickers and Scilex that are allocated between the instruments issued and assumed in the Business Combination and recorded as a reduction to additional paid-in capital or expense.
- (F) Reflects the elimination of Vickers's historical accumulated deficit.
- (G) Reflects \$8,337,491 of Scilex liabilities assumed by Sorrento as of September 30, 2022. Such amount was included in the Outstanding Indebtedness which was contributed to Scilex as a capital contribution in exchange for the issuance of Scilex Common Stock pursuant to the Debt Exchange Agreement and at the Effective Time such shares of Scilex Common Stock were exchanged for shares of New Scilex Series A Preferred Stock and New Scilex Common Stock in Note (H).
- (H) Reflects the conversion of Outstanding Indebtedness of \$284.3 million as of September 30, 2022 into shares of New Scilex Common Stock and New Scilex Series A Preferred Stock pursuant to the Debt Exchange Agreement.
- (I) Reflects the conversion of the Working Capital Loans of \$5.0 million as of September 30, 2022 to New Scilex Common Stock pursuant to the Vickers Debt Agreement.
- (J) Reflects the forfeiture of 40% of the value of the outstanding Private Placement Warrants. Pursuant to the Sponsor Support Agreement, 40% of the Private Placement Warrants are forfeited if 75% or more of the Vickers's public shareholders exercise their right to redeem their Vickers Ordinary Shares. A reduction of \$0.5 million was reflected against derivative liabilities with an offset to additional paid-in capital.
- (K) Reflects a cash payment of \$1.2 million made in conjunction with the Closing for costs associated with directors' and officers' ("D&O") insurance policies covering current or former directors and officers of Vickers and Scilex, which are required to be maintained for a period of six (6) years from the effective date pursuant to the Merger Agreement.

**Note 4 - Transaction Adjustments to Unaudited Pro Forma Condensed Combined Statement of Operations for the nine months ended September 30, 2022 and the year ended December 31, 2021.**

(AA) Reflects the elimination of interest earned on investment held in the Trust Account.

(BB) Represents an adjustment to reflect previously expensed transaction costs as a reduction to additional paid-in capital (see Note(E)) as part of the Business Combination.

(CC) Reflects the 40% of Private Placement Warrants forfeited, which resulted in a gain from derivative liabilities.

(DD) Reflects an incremental amount of transaction costs expensed that are allocated to the Private Placement Warrants.

(EE) Represents the immediate expense of costs incurred on D&O insurance policies obtained in connection with the Business Combination.

(FF) Reflects the elimination of interest income on mandatorily redeemable ordinary shares liability related to the redemption of 4,073,605 Vickers Ordinary Shares made in connection with the Extension Proposal.

**Note 5 - Net Income (Loss) per Share**

Net income (loss) per share is calculated based on the weighted average of New Scilex Common Stock outstanding and the issuance of additional shares in connection with the Business Combination, assuming the shares were outstanding since January 1, 2021. As the Business Combination is being reflected as if it had occurred at the beginning of the period presented, the calculation of weighted average shares outstanding for basic and diluted net income (loss) per share assumes that the shares issuable relating to the Business Combination have been outstanding for the entire periods presented.

The following potential outstanding securities were excluded from the computation of pro forma net loss per share, basic and diluted, because their effect would have been anti-dilutive or issuance of such shares is contingent upon the satisfaction of certain conditions which were not satisfied by the end of the period:

The unaudited pro forma condensed combined financial information has been prepared using the actual redemptions at Closing related to New Scilex Common Stock for the nine months ended September 30, 2022 and the year ended December 31, 2021 (in thousands, except number of shares and per share amounts):

	<u>Nine Months Ended September 30, 2022</u>
Pro forma net income (loss)	\$ (4,145)
Pro forma weighted average shares of common stock outstanding—basic and diluted	141,098,856
Pro forma net loss per share—basic and diluted	\$ (0.03)
	<u>Year ended December 31, 2021</u>
Pro forma net (loss) income	\$ (89,405)
Pro forma weighted average shares of common stock outstanding—basic and diluted	141,098,856
Pro forma net loss per share—basic and diluted	\$ (0.63)