

NORTHROP GRUMMAN SYSTEMS CORPORATION / MONTEREY BAY AQUARIUM RESEARCH INSTITUTE
PROPRIETARY AND CONFIDENTIAL

JOINT OWNERSHIP AGREEMENT

THIS JOINT OWNERSHIP AGREEMENT (the “**Agreement**”) is entered into and made effective as of the date of the last signature below (the “**Effective Date**”), by and between Northrop Grumman Systems Corporation (“**Northrop Grumman**” or “**NGSC**”), a corporation incorporated under the laws of the State of Delaware, United States of America (“**U.S.A.**”), by and through its Mission Systems sector, with offices at 1580A West Nursery Road, Linthicum, Maryland 21090 U.S.A. and Monterey Bay Aquarium Research Institute (“**MBARI**”), a 501(c)(3) nonprofit oceanographic research center organized under the laws of the State of California, having its principal place of business at 7700 Sandholdt Road, Moss Landing, California 95039 U.S.A. For the purposes of this Agreement, either Northrop Grumman or MBARI may be referred to in the singular as a “**Party**” or in the plural as the “**Parties**”.

RECITALS

WHEREAS, NGSC and MBARI are the parties to a license agreement (the “**License Agreement**”) having an effective date of February __, 2021, in which NGSC non-exclusively licensed certain of its Intellectual Property Rights pertaining to or implementing its patented Connector Technology (as defined in the License Agreement) to MBARI;

WHEREAS, NGSC and MBARI have agreed that any Joint Intellectual Property (as defined in the License Agreement) arising under the License Agreement shall be subject to the terms and conditions of this Agreement; and

WHEREAS, NGSC and MBARI acknowledge and agree that NGSC shall not be investing in MBARI or in any research activities sponsored by MBARI and furthermore, that NGSC is not directing MBARI to conduct any research on NGSC’s or any third party’s behalf;

WHEREAS, but for the existence of the License Agreement, the Parties would not be entering into this Agreement;

NOW, THEREFORE, the Parties agree as follows:

All capitalized words used in this Agreement shall have as their meaning that definition as described in the License Agreement unless such terms are otherwise as defined in this Agreement.

1. Ownership and Use of Joint Intellectual Property.

a) *Ownership of Joint Intellectual Property.* The Parties represent and warrant that they are both the joint owners of the Joint Intellectual Property as listed in Schedule A (as updated from time to time based on the Reports) with each Party having an equal, undivided, whole interest in and to such Joint Intellectual Property, along with all Intellectual Property Rights pertaining thereto. To that objective, each Party agrees to cooperate with the other Party and to take all reasonable steps to perfect title in and to all Intellectual Property Rights in and to such Joint Intellectual Property. Specifically, MBARI will require its employees, agents and other third parties (including Authorized Subcontractors) authorized to work for or on behalf of MBARI to Design, Develop, Test, repair and maintain Licensed Products to assign all rights and title to all Enhancements (including, but not limited to, any Design Enhancements and Enhancements made to Licensed Products) developed under such endeavor and all Intellectual Property Rights thereto, to

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both NGSC and MBARI. All Enhancements arising out of such endeavors shall be deemed to be Joint Intellectual Property.

b) *Ownership of Background Intellectual Property.* The Parties represent and warrant that each Party is the respective owner of, or otherwise has all necessary rights, title and interest in their respective Background Intellectual Property used in connection with the Joint Intellectual Property and that this Agreement does not restrict either Party's use of its respective Background Intellectual Property provided that such use does not include the other Party's rights in and to the Joint Intellectual Property.

c) *Confidentiality.* Subject to the provisions of Section 5 of the License Agreement or as otherwise set forth in this Agreement, each Party agrees to use reasonable commercial efforts to protect and maintain the Joint Intellectual Property as confidential and proprietary in the same manner such Party protects its own Intellectual Property of a similar character but in no event less than reasonable degree of care.

d) *Copyrights.* Any literary work deemed by the Parties to be a "joint work" as that term is defined in 17 U.S.C. §101 (wherein both NGSC and MBARI prepared their respective portions of the work with the knowledge and intention that their respective contributions be merged into inseparable or interdependent parts of a unitary whole) shall be Joint Intellectual Property and ownership of such joint works shall vest, pursuant to 17 U.S.C. §201(a), in both NGSC and MBARI such that both are joint owners of the joint work.

e) *Patentable Inventions.* NGSC shall be the Party responsible for filing all patent applications pertaining to the Joint Intellectual Property. At its sole discretion, NGSC may file patent applications on the Joint Intellectual Property. In any patent application on the Joint Intellectual Property, NGSC shall name the applicable NGSC and MBARI personnel as co-inventors and shall name both NGSC and MBARI as equal co-assignees and owners; however, patent applications filed by NGSC shall not disclose any MBARI Proprietary Information without the prior written permission of MBARI. Each Party hereby agrees to provide such assistance as necessary to the other Party to permit and facilitate the prosecution of such patent application(s) in any U.S. and/or foreign patent office.

f) *Patent Expenses and Patent Prosecution.* NGSC shall pay for the costs associated with the filing, prosecution and maintenance of each patent application pertaining to Joint Intellectual Property. In the event NGSC provides notice to MBARI in writing of NGSC's desire not to file or alternatively to discontinue the prosecution of any patent application(s) to issuance or to maintain any U.S. or foreign patent application(s) based on any Joint Intellectual Property, MBARI may file a patent application or alternatively, continue the prosecution or maintenance of such patent application(s) at MBARI's own expense. NGSC will endeavor to provide such notice to MBARI in a reasonable amount of time before any applicable deadline applicable to an applicable patent application(s).

g) *First Right of Acquisition.* Each Party hereto grants to the other Party (the "**Prospective Buyer**") for the purposes of this Paragraph 1.g) an irrevocable exclusive first right to acquire the other Party's (that is, the "**Seller**") for the purposes of this Paragraph 1.g) entire interest in any Joint Intellectual Property upon thirty (30) Days' written notice of any intended sale of that interest, in whole or in part, to a third party, provided the Prospective Buyer offers a purchase price for such rights on equal or better terms than the intended sale price proposed on fair and reasonable terms by Seller to such third party.

h) *Additional Restriction.* As partial consideration for the license and rights granted by NGSC to MBARI in the License Agreement, MBARI shall not file a patent based on, or which is a derivative work

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of, NGSC's patented Connector Technology or which would otherwise relate to or displace one or more NGSC-owned NiobiCon™ connector designs in the marketplace. Subject to the foregoing, nothing herein shall restrict MBARI from filing a patent based on MBARI's Background Intellectual Property.

i) **Consideration; Payments.** As partial consideration for the rights and license granted to MBARI under the terms of the License Agreement, and as partial consideration for NGSC's payment of all patent prosecution and maintenance costs as set forth in this Agreement, the Parties hereby acknowledge and agree that NGSC shall not be required to pay any compensation to MBARI for NGSC's incorporation of the Joint Intellectual Property (in whole or in part) in any products sold to an NGSC Affiliate or to a third party.

j) **Licensing to Third Parties.** During the term of this Agreement, NGSC shall have the exclusive right to enter into negotiations with a commercial third party (a "**Joint IP Licensee**") for the licensed use of its undivided interest in all or any portion of the Joint Intellectual Property (a "**Joint IP License**"). Any Joint Intellectual Property licensed to a Joint IP Licensee must be licensed "as-is" with no warranties provided. MBARI shall have no liability and shall be held harmless for NGSC's and such Joint IP Licensee's use of the Licensed Intellectual Property or any Joint IP Products manufactured by or on behalf of NGSC or the Joint IP Licensee under the terms of such license agreement. No MBARI Background Intellectual Property shall be used by NGSC or licensed under the terms of such Joint IP License without MBARI's prior written consent and agreement to the terms of use of such Background Intellectual Property thereof. NGSC and MBARI shall split the revenue from the licensing of any Joint IP, with NGSC receiving 75% and MBARI receiving 25% of all fees, royalties and other compensation received from the Joint IP Licensee. If the Joint Intellectual Property is subject to copyright, each Party agrees to and does hereby waive its right to an accounting from the other Party's exploitation or use (including use by an authorized third party) of the copyrighted material. This provision shall not waive or supersede any confidentiality obligations of either Party nor grant to either Party audit rights not already granted to such Party. Any amounts due and payable to MBARI under this provision shall be offset by remuneration of one-half (50%) of NGSC's cumulative out-of-pocket legal and administrative costs ("**NGSC Costs**") pertaining to the Joint Intellectual Property for: (i) U.S. and foreign patent filing, prosecution and maintenance of any Joint Intellectual Property patents; (ii) registration of copyrights or other Joint Intellectual Property rights; and (iii) IP litigation or other IP defense pertaining to the Joint Intellectual Property (including, but not limited to, any costs associated with any invalidity challenge, reexamination, reissue, arbitration, mediation or other dispute resolution process). NGSC shall not be liable for breach or any damages arising from, related to, or in connection with this Agreement, including this Section 1.j), or the License Agreement, in the event that NGSC grants a license to its Intellectual Property and/or Intellectual Property Rights to a third party and wherein: (a) such license grants rights to the entirety or substantive portions of NGSC's patent portfolio, (b) such license does not specifically identify Joint IP but can be interpreted as granting rights to Joint IP; and (c) NGSC has failed to notify MBARI of such license.

k) **Limitations on Use.** Except as provided for in the License Agreement and this Agreement, neither NGSC nor MBARI will reproduce, distribute, create adaptations, perform or display, license, sublicense, or sell the Joint Intellectual Property to any third party, without the prior express written permission of the other Party.

l) **Marking Notice.** In the event that a Party hereto sells a product (that is, a Joint IP Product) incorporating all or any portion of the patented Joint Intellectual Property, or licenses to a third party the right to manufacture and sell Joint IP Products, that Party shall mark (or direct its third party licensee to mark), to the extent commercially feasible and consistent with prevailing business practices, all such

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products that are manufactured or sold with the appropriate United States of America patent numbers or, optionally, publish a virtual marking patent registry for such Joint IP Products on such Party's website (or its third party licensees' websites) in accordance with United States federal law. Likewise, in the event of the development of any Joint Intellectual Property deemed to be a joint work under 17 U.S.C. §101, each Party hereto shall ensure that all copies of such joint work delivered to a third party or reproduced in any fixed medium shall contain the following copyright notice: "© 2021. Monterey Bay Aquarium Research Institute and Northrop Grumman Systems Corporation. All rights reserved."

2. General Indemnification and Limitation of Liability.

EACH PARTY SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER PARTY, AND THEIR RESPECTIVE PARENTS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL REASONABLE COSTS, LOSSES, EXPENSES, DAMAGES, CLAIMS, SUITS OR ANY LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES ARISING OUT OF A PARTY'S BREACH OF ITS OBLIGATIONS OR FAILURE TO PERFORM UNDER THIS AGREEMENT. EXCEPT WITH RESPECT TO: (A) EACH PARTY'S OBLIGATIONS UNDER SECTION 1(J) OF THIS AGREEMENT; (B) THE MISAPPROPRIATION BY ONE PARTY OF THE OTHER PARTY'S TRADE SECRETS; OR (C) THE INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (1) EACH PARTY'S CUMULATIVE, AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY DIRECT DAMAGES ARISING UNDER, RELATED TO, OR IN CONNECTION WITH ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE, FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED ONE MILLION U.S. DOLLARS (\$1,000,000); AND (2) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING UNDER, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS SHALL APPLY EVEN IF SUCH LOSS WAS REASONABLY FORESEEABLE OR EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY DAMAGES (REGARDLESS OF THEIR NATURE) UNDER THIS AGREEMENT IN CONNECTION WITH ANY CLAIMS OR ACTIONS BROUGHT MORE THAN TWO (2) YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

Except for the foregoing, each Party agrees to be responsible for its own wrongful or negligent acts or omissions or those of its officers, agents, employees and/or third party licensees (if any) arising in any way out of this Agreement to the extent permitted by law. Neither Party shall be liable in any way to any third party for any engagement, obligation, contract or representation or for any negligent act on the part of the other Party except as expressly provided in this Agreement.

3. Term and Termination.

a) **Duration.** The term ("**Term**") of this Agreement shall begin on the Effective Date and continue until the earlier of: (a) termination by written agreement of the Parties; or (b) the expiration of the last of the patents comprising the Joint Intellectual Property. This Agreement may also be terminated by either Party upon the other Party's material breach if, upon receipt of the non-breaching Party's written notice of such default, the breaching Party does not cure the default in the time (but in no event less than

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thirty (30) days after the breaching Party's receipt of such notice in accordance with the provisions of Section 6. l) below) and manner set forth in such notice.

b) *Surviving Terms.* Notwithstanding any expiration or termination of this Agreement, the provisions of Section 1 a)-i), k) and l), Section 2, this Section 3. b), Section 4, Section 5, and Section 6, will survive and remain in effect in accordance with their terms.

4. Assignment.

Neither Party shall assign, sublicense, or otherwise transfer in any manner, in whole or in part, any of its rights or obligations hereunder, or its interest in and to the Joint Intellectual Property, without the express, prior written consent of the other Party; such consent shall not be unreasonably withheld. Any attempted assignment, transfer, or encumbrances of this Agreement or the Joint Intellectual Property by a Party without the express written consent of the other Party shall be void and without any legal force or effect. In no instance shall the Joint Intellectual Property be used as collateral or placed into escrow.

5. No Third Party Intellectual Property Indemnification.

EXCEPT AS SET FORTH IN THIS AGREEMENT AND AGREED TO BY THE PARTIES IN THE LICENSE AGREEMENT, NEITHER PARTY HAS A DUTY TO DEFEND, INDEMNIFY OR HOLD HARMLESS THE OTHER PARTY FROM OR AGAINST ANY CLAIM, DEMAND OR CAUSE OF ACTION, INCLUDING ANY DAMAGES, COSTS OR EXPENSES INCURRED BY THE OTHER PARTY IN CONNECTION THEREWITH, ARISING OUT OF, RESULTING FROM, CONNECTED TO OR IN ANY WAY RELATING TO THE ACTUAL OR ALLEGED VIOLATION OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS BELONGING TO A THIRD PARTY.

6. General.

a) *Force Majeure.* Neither Party to this Agreement will be held liable for failure to perform any obligation of or delay in performance resulting from or contributed to by any cause beyond the reasonable control of either Party from any act of God, act of civil or military authority, act of war whether declared or undeclared, act (including delay, failure to act, or priority) of any governmental authority, civil disturbance, insurrection or riot, sabotage, fire, severe weather conditions, earthquake, flood, epidemic, pandemic, strike, work stoppage or other labor difficulty, embargo, delay in transportation, or any other delay beyond either Party's control, except that no Party shall be excused for failure or delay in making any payment of money. This provision shall not, however, release such Party from using its best efforts to avoid or remove such causes, and such Party shall continue performance under the terms of this Agreement with the utmost dispatch whenever such cause for failure or delay in performance has terminated.

b) *Relationship of the Parties.* This Agreement shall not create a joint venture, teaming arrangement, partnership or agency relationship between the Parties.

c) *Publicity.* Any news releases, public announcements, advertisements, promotional materials, research publications, or publicity, including any information posted on a Party's webpage(s) (collectively "**Publications**," each a "**Publication**"), released by a Party concerning either (a) this Agreement and/or (b) the Joint Intellectual Property will be subject to prior written approval by the non-publishing Party, except that this Agreement and the terms thereof may be made known to the United States Government, and additionally, any material financial disclosures required pursuant to law or

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regulation may be promptly made without prior approval of the non-publishing Party. The publishing Party shall ensure that a complete copy of each Publication is provided to the non-publishing Party, and the non-publishing Party shall review such Publication and provide its notice of approval within thirty (30) days of receipt thereof or within such time period as otherwise agreed to by the Parties in writing. Such approval shall not be unreasonably withheld. Notwithstanding the provisions of the preceding sentence of this Section 6.c), each Party shall have the right to market and promote on its website or through normal advertising channels any products incorporating (in whole or in part) Joint Intellectual Property, so long as such marketing and promotional efforts do not reference the non-publishing Party.

d) *Names and Trademarks.* It is expressly understood and agreed that no grant of rights in and to the trade names, trademarks, logos, or service marks, registered or non-registered (collectively “**Names and Trademarks**”) are licensed under the terms of this Agreement. Each Party hereto agrees that it will not use the other Party’s Names and Trademarks without prior written approval from the other Party. Notwithstanding the preceding sentence, each Party may use NGSC’s “NiobiCon™” common law trademark (or other marking directed by NGSC) in its research Publications or advertising and market campaigns pertaining to the sale of products incorporating (in whole or in part) Joint Intellectual Property.

e) *Compliance with Laws.* Each Party hereto warrants and represents that it will comply with all laws, regulations, ordinances, governments, standards and the like applicable to its activities under this Agreement and agrees to indemnify and hold the other Party harmless with regard to the indemnifying Party’s non-compliance with the same.

f) *No Waiver.* The failure of either Party to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any rights or remedies shall not be construed as a waiver of its right to assert any of the same or to rely on any such terms and conditions at any time thereafter.

g) *Severability and Invalidity.* Each provision of this Agreement is severable. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it is to that extent to be deemed omitted and the remaining provisions shall remain in full force and effect.

h) *Modifications.* This Agreement may be amended or modified only by an instrument in writing signed by duly authorized representatives of the respective Parties hereto.

i) *Construction of this Agreement; Certain Terms and Phrases.* Any reference to any federal, state, local or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated there under, unless the context requires otherwise. The Parties have participated jointly in the negotiation and drafting of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction will be used to interpret the meaning of this Agreement.

j) *Governing Law; Venue.* This Agreement shall be interpreted and construed; its performance and any dispute arising under this Agreement shall be governed, in all respects by the substantive and procedural laws and judicial decisions of the State of Maryland and the United States of America, except however that the Maryland choice of law provisions shall not apply. Any and all claims, controversies or disputes arising out of or in connection with this Agreement shall be resolved in accordance with this Section 6.j. The Parties consent to the exclusive jurisdiction of the state and federal courts of Maryland, for any such action, suit or proceeding. The Parties waive any objection to the laying of venue for any suit, action or proceeding in such courts. The Parties waive any right they might have to

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a trial by jury in any such suit, action or proceeding. The prevailing Party in any such dispute or legal action or other proceeding shall be entitled to recover from the other Party its reasonable costs, attorneys' fees and expenses, including any legal fees and expert witness fees, as authorized by a court order.

k) Remedies / Specific Performance. Each Party acknowledges that money damages would not be a sufficient remedy for its breach of this Agreement and that irreparable harm would result to the other Party if this Agreement were not specifically enforced. Therefore, the rights and obligations of the Parties under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith.

l) Notices. All notices, approvals, consents and other communications required or permitted under this Agreement will be in writing and delivered by hand, by facsimile or e-mail with confirmation of delivery, by courier or overnight delivery service with written verification of receipt, or by registered or certified mail, return receipt requested, postage prepaid, and in each instance will be deemed given upon receipt. All such notices, approvals, consents and other communications will be sent to the following address (or to such other address as may be specified by either Party to the receiving Party in accordance with this Section 6.1). This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution. All legal notices to NGSC should be sent to NGSC's Falls Church, Virginia address listed below.

If to NGSC:

NORTHROP GRUMMAN SYSTEMS CORPORATION
Mission Systems sector
1580A West Nursery Road
Linthicum, Maryland 21090 U.S.A.
Attention: Contract Administration
Email: na.lee@ngc.com
Telephone: (703) 556-1698

With copies to:

NORTHROP GRUMMAN SYSTEMS CORPORATION
2980 Fairview Park Drive, Mailstop 12183A
Falls Church, Virginia 22042 U.S.A.
Attention: Law Department
Email: ip.licensing@ngc.com and IntellectualPropertyNGMS@ngc.com

If to MBARI:

MONTEREY BAY AQUARIUM RESEARCH INSTITUTE
7700 Sandholdt Road
Moss Landing, California 95039 U.S.A.
Telephone: (831) 775-1731
URL: <https://www.MBARI.org>
Attention: Mr. Basilio Martinez, Chief Financial Officer
Email: basilio@mbari.org

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m) *United Nations Convention.* The United Nations Convention on the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed.

n) *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

o) *Entire Agreement; Amendment; Headings.* This Agreement, including Schedule A, constitutes the entire understanding and agreement of and between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations and agreements with respect to the subject matter hereof. In the event of a conflict between this Agreement and the License Agreement and any non-disclosure agreements (“NDA”) or purchase orders placed between the Parties, this Agreement shall prevail as to the ownership of the Joint Intellectual Property, the License Agreement shall prevail with respect to MBARI’s use of the Licensed Subject Matter, each NDA shall prevail as to the confidential treatment of any Party disclosures not made subject to this Agreement or to the License Agreement, and each purchase order shall only govern as to the quantity, price and delivery terms of any goods or services. This Agreement shall not be varied by any oral agreements or representations or otherwise except by an instrument in writing of subsequent date hereto duly executed by authorized representatives of the Parties. The headings herein are for convenience only and shall not limit in any way the scope of any provisions of this Agreement. Schedule A, its contents thereof, is hereby attached to, made a part of, and incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their duly authorized representatives.

**MONTEREY BAY AQUARIUM
RESEARCH INSTITUTE**

By: _____

Printed Name: _____
Authorized Representative

Title: _____

Date: _____

**NORTHROP GRUMMAN SYSTEMS
CORPORATION**

Mission Systems sector

By: _____

Printed Name: Narae Lee
Authorized Representative

Title: Contract Administrator

Date: February 2, 2021

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SCHEDULE A FOLLOWS.**

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SCHEDULE A - LIST OF JOINT INTELLECTUAL PROPERTY

Reserved.

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