

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

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FILER

Beyond Air, Inc.

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SIC: **3841** Surgical & medical instruments & apparatus

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**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): March 4, 2021

Beyond Air, Inc.

(Exact Name of Registrant as Specified in Charter)

**Delaware
(State or Other Jurisdiction
of Incorporation)**

**001-38892
(Commission
File Number)**

**47-3812456
(I.R.S. Employer
Identification No.)**

**825 East Gate Blvd., Suite 320
Garden City, NY 11530
(Address of Principal Executive Offices and Zip Code)**

**(516) 665-8200
Registrant's Telephone Number, Including Area Code
(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 (see General Instruction A.2. below):

- Written communication 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
Common Stock, par value \$.0001 per share	XAIR	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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.

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

Third Amended and Restated 2013 Equity Incentive Plan

On March 4, 2021, Beyond Air, Inc. (the “Company”) held its 2021 Annual Meeting of Stockholders (the “Annual Meeting”). At the Annual Meeting, the Company’s stockholders, upon the recommendation of the Company’s Board of Directors (the “Board”), approved the Company’s Third Amended and Restated 2013 Equity Incentive Plan (the “Amended 2013 Plan”) to increase the number of shares of common stock reserved for issuance by an additional 1,500,000 shares. A summary of the Amended 2013 Plan is set forth on pages 24 to 30 in the Company’s Proxy Statement for the Annual Meeting filed with the Securities and Exchange Commission on January 22, 2021 (the “Proxy Statement”), and such description is incorporated by reference herein. That summary and the above description of the Amended 2013 Plan do not purport to be complete and are qualified in their entirety by reference to the Amended 2013 Plan, which is attached hereto and incorporated herein by reference in its entirety as Exhibit 10.1.

2021 Employee Stock Purchase Plan

At the Annual Meeting, the Company’s stockholders, upon the recommendation of the Board, also approved the Company’s 2021 Employee Stock Purchase Plan (the “2021 ESPP”). A summary of the 2021 ESPP is set forth on pages 31 to 38 in the Proxy Statement, and such description is hereby incorporated by reference herein. That summary and the above description of the 2021 ESPP do not purport to be complete and are qualified in their entirety by reference to the 2021 ESPP, which is attached hereto and incorporated herein by reference in its entirety as Exhibit 10.2.

Item 5.07 Submission of Matters to a Vote of Security Holders

On March 4, 2021, the Company held the Annual Meeting. As of January 11, 2021, the date of record for determining the stockholders entitled to vote on the proposals presented at the Annual Meeting, there were 19,456,505 shares of Company common stock issued and outstanding and entitled to vote at the Annual Meeting. A total of 13,525,657 shares of common stock, constituting a quorum, were represented in person or by valid proxies at the Annual Meeting. The final results for each of the matters submitted to a vote of the Company’s stockholders at the Annual Meeting are as follows:

Proposal 1. At the Annual Meeting, the terms of seven (7) members of the Board expired. All of the seven (7) nominees for director were elected to serve until the next annual meeting of stockholders or until their successors are elected and qualified, or until such director’s prior death, resignation, retirement, disqualification or removal. The result of the votes to elect the seven (7) directors was as follows:

Directors	For	Withheld	Broker Non-Votes
Steven A. Lisi	8,694,524	33,357	4,797,776
Amir Avniel	8,697,416	30,465	4,797,776
Ron Bentsur	8,678,982	48,899	4,797,776
Robert F. Carey	8,697,746	30,135	4,797,776
Dr. William Forbes	8,017,441	710,440	4,797,776
Yoori Lee	8,395,622	332,259	4,797,776
Erick J. Lucera	7,575,321	1,152,560	4,797,776

Proposal 2. At the Annual Meeting, the stockholders ratified the appointment of Friedman LLP as the Company’s independent registered public accounting firm for the fiscal year ending March 31, 2021. The result of the votes to ratify the appointment of Friedman LLP was as follows:

For	Against	Abstain
13,472,322	37,555	15,780

Proposal 3. At the Annual Meeting, the Company’s stockholders approved the Amended 2013 Plan to increase the number of shares reserved for issuance by 1,500,000. The result of the votes to approve the Amended 2013 Plan was as follows:

For	Against	Abstain	Broker Non-Votes
7,026,866	1,677,856	23,159	4,797,776

Proposal 4. At the Annual Meeting, the Company’s stockholders approved the 2021 ESPP. The result of the votes to approve the 2021 ESPP was as follows:

For	Against	Abstain	Broker Non-Votes
8,691,123	22,454	14,304	4,797,776

Proposal 5. At the Annual Meeting, the Company’s stockholders did not approve the amendment to the Company’s Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) to include a federal forum selection provision. The result of the votes to approve the amendment to the Certificate of Incorporation was as follows:

For	Against	Abstain	Broker Non-Votes
8,183,275	522,329	22,277	4,797,776

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Beyond Air, Inc. Third Amended and Restated 2013 Equity Incentive Plan (incorporated by reference from Appendix A to the Proxy Statement for Beyond Air, Inc.’s 2021 Annual Meeting of Stockholders, filed with the SEC on January 22, 2021).
10.2	Beyond Air, Inc. 2021 Employee Stock Purchase Plan.

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.

BEYOND AIR, INC.

Date: March 9, 2021

By: /s/ Steven A. Lisi
 Name: Steven A. Lisi
 Title Chief Executive Officer

BEYOND AIR, INC.

2021 EMPLOYEE STOCK PURCHASE PLAN

BEYOND AIR, INC.

2021 EMPLOYEE STOCK PURCHASE PLAN

1. PURPOSE AND INTERPRETATION

(a) The purpose of the Plan is to encourage and to enable Eligible Employees of the Company and its Participating Affiliates, through after-tax payroll deductions, to acquire proprietary interests in the Company through the purchase and ownership of shares of Stock. The Plan is intended to benefit the Company and its stockholders by (a) incentivizing Participants to contribute to the success of the Company and to operate and manage the Company's business in a manner that will provide for the Company's long-term growth and profitability and that will benefit its stockholders and other important stakeholders and (b) encouraging Participants to remain in the employ of the Company or its Participating Affiliates.

(b) The Plan and the ESPP Options granted under the Plan are intended to satisfy the requirements for an "employee stock purchase plan" under Code Section 423. Notwithstanding the foregoing, the Company makes no undertaking to, nor representation that it will, maintain the qualified status of the Plan or any ESPP Options granted under the Plan. In addition, ESPP Options that do not satisfy the requirements for an "employee stock purchase plan" under Code Section 423 may be granted under the Plan pursuant to the rules, procedures, or sub-plans adopted by the Administrator, in its sole discretion, for certain Eligible Employees.

2. DEFINITIONS

(a) "**Account**" shall mean a bookkeeping account established and maintained to record the amount of funds accumulated pursuant to the Plan with respect to a Participant for the purpose of purchasing shares of Stock under the Plan.

(b) "**Administrator**" shall mean the Board, the Compensation Committee of the Board, or any other committee of the Board designated by the Board to administer the Plan.

(c) "**Board**" shall mean the Board of Directors of the Company.

(d) "**Change in Control**" shall have the meaning set forth in the Company's 2013 Equity Incentive Plan, as amended and restated, or any successor omnibus incentive plan.

(e) "**Code**" shall mean the Internal Revenue Code of 1986, as amended, as now in effect or as hereafter amended, and any successor thereto. References in the Plan to any Code Section shall be deemed to include, as applicable, regulations and guidance promulgated under such Code Section.

(f) "**Company**" shall mean Beyond Air, Inc., a Delaware corporation, and any successor thereto.

(g) "**Custodian**" shall mean the third-party administrator designated by the Administrator from time to time.

(h) "**Effective Date**" shall mean March 4, 2021 the date of the Company's 2021 annual meeting of stockholders, subject to approval of the Plan by the Company's stockholders on such date.

(i) “**Eligible Compensation**” shall mean, unless otherwise established by the Administrator prior to the start of an Offering Period, regular base compensation paid to a Participant by the Company or a Participating Affiliate as compensation for services to the Company or Participating Affiliate, including such amounts of base compensation as are deferred by the Participant: (x) under a qualified cash or deferred arrangement described in Section 401(k) of the Code; or (ii) to a plan qualified under Section 125 of the Code. Unless otherwise determined by the Administrator prior to the start of an Offering Period, “**Eligible Compensation**” does not include overtime, bonuses, annual awards, equity-based awards, other incentive payments, reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation, contributions (other than contributions described in the first sentence) made on the Participant’s behalf by the Company or one or more Participating Affiliates under any employee benefit or welfare plan now or hereafter established, and any other payments not specifically referenced in the first sentence.

(j) “**Eligible Employee**” shall mean a natural person who has been a full-time or part-time employee (including an officer) of the Company or a Participating Affiliate for at least three (3) months as of an Offering Date, except the following, who shall not be eligible to participate under the Plan: (i) an employee whose customary employment is twenty (20) hours or less per week, (ii) an employee whose customary employment is for not more than five (5) months in any calendar year, (iii) an employee who, after exercising his or her rights to purchase shares of Stock under the Plan, would own (directly or by attribution pursuant to Code Section 424(d)) shares of Stock (including shares that may be acquired under any outstanding ESPP Options) representing five percent (5%) or more of the total combined voting power of all classes of stock of the Company, (iv) an employee who is a citizen or resident of a foreign jurisdiction (without regard to whether such employee is also a U.S. citizen or resident alien), if the grant of an ESPP Option under the Plan or an Offering Period to such employee is prohibited under the laws of such foreign jurisdiction or compliance with the laws of such foreign jurisdiction would cause the Plan or an Offering Period to violate the requirements of Code Section 423 and (v) any other natural person whom the Administrator determines to exclude from an offering designed to satisfy the requirements of Code Section 423, provided such exclusion is permitted by Code Section 423 and the guidance issued thereunder. The Administrator may, at any time in its sole discretion, if it deems it advisable to do so, exclude the participation of the employees of a particular Participating Affiliate from eligibility to participate in a future Offering Period. Notwithstanding the foregoing, for purposes of a Non-423(b) Offering under the Plan, if any, the Administrator shall have the authority, in its sole discretion, to establish a different definition of Eligible Employee as it may deem advisable or necessary.

(k) “**Enrollment Form**” shall mean the agreement(s) between the Company and an Eligible Employee, in such written, electronic, or other format and/or pursuant to such written, electronic, or other process as may be established by the Administrator from time to time, pursuant to which an Eligible Employee elects to participate in the Plan or to which a Participant elects to make changes with respect to the Participant’s participation as permitted by the Plan.

(l) “**Enrollment Period**” shall mean that period of time prescribed by the Administrator, which period shall conclude prior to the Offering Date, during which Eligible Employees may elect to participate in an Offering Period. The duration and timing of Enrollment Periods may be changed or modified by the Administrator from time to time.

(m) “**ESPP Option**” shall mean the right granted to Participants to purchase shares of Stock pursuant to an offering under the Plan.

(n) “**Fair Market Value**” shall mean the value of each share of Stock subject to the Plan on a given date determined as follows: (i) if on such date the shares of Stock are listed on an established national or regional stock exchange or are publicly traded on an established securities market, the Fair Market Value of the shares of Stock shall be the closing price of the shares of Stock on such exchange or in such market (the exchange or market selected by the Administrator if there is more than one such exchange or market) on such date or, if such date is not a Trading Day, on the Trading Day immediately preceding such date, or, if no sale of the shares of Stock is reported for such Trading Day, on the next preceding day on which any sale shall have been reported; or (ii) if the shares of Stock are not listed on such an exchange or traded on such a market, the Fair Market Value of the shares of Stock shall be determined by the Administrator in good faith.

(o) “**Holding Period**” shall have the meaning set forth in Section 10(c)(i).

(p) “**Non-423(b) Offering**” shall mean the rules, procedures, or sub-plans, if any, adopted by the Administrator, in its sole discretion, as a part of the Plan, pursuant to which ESPP Options that do not satisfy the requirements for “employee stock purchase plans” that are set forth under Code Section 423 may be granted to Eligible Employees as a separate offering under the Plan.

(q) “**Offering Date**” shall mean the first day of any Offering Period under the Plan.

(r) “**Offering Period**” shall mean the period determined by the Administrator pursuant to Section 7, which period shall not exceed twenty-seven (27) months, during which payroll deductions are accumulated for the purpose of purchasing Stock under the Plan.

(s) “**Outstanding Election**” shall mean a Participant’s then-current election to purchase shares of Stock in an Offering Period, or that part of such an election which has not been cancelled (including any voluntary cancellation under Section 6(c) and deemed cancellation under Section 11) prior to the close of business on the last Trading Day of the Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the Purchase Period) or such other date as determined by the Administrator.

(t) “**Participant**” shall mean an Eligible Employee who has elected to participate in the Plan pursuant to Section 5.

(u) “**Participating Affiliate**” shall mean any Subsidiary designated by the Administrator from time to time, in its sole discretion, whose employees may participate in the Plan or in a specific Offering Period under the Plan, if such employees otherwise qualify as Eligible Employees.

(v) “**Plan**” shall mean this Beyond Air, Inc. 2021 Employee Stock Purchase Plan, as it may be amended from time to time.

(w) “**Purchase Period**” shall mean the period during an Offering Period designated by the Administrator on the last Trading Day of which purchases of Stock are made under the Plan. An Offering Period may have one or more Purchase Periods.

(x) “**Purchase Price**” shall mean the purchase price at which shares of Stock may be purchased under the Plan, which shall be set by the Administrator from time to time.

(y) “**Stock**” shall mean the common stock, \$0.0001 par value per share, of the Company, or any security into which shares of Stock may be changed or for which shares of Stock may be exchanged as provided in Section 12.

(z) “**Subsidiary**” shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the Effective Date shall be considered a Subsidiary commencing as of such date.

(aa) “**Termination of Employment**” shall mean, with respect to a Participant, a cessation of the employee-employer relationship between the Participant and the Company or a Participating Affiliate for any reason,

(i) including, without limitation, (A) a termination by resignation, discharge, death, disability, retirement, or the disaffiliation of a Subsidiary, (B) unless otherwise determined or provided by the Administrator, a transfer of employment to a Subsidiary that is not a Participating Affiliate as of the first day immediately following the three (3)-month period following such transfer, and (C) a termination of employment where the individual continues to provide certain services to the Company or a Subsidiary in a non-employee role, but

(ii) excluding (A) such termination of employment where there is a simultaneous reemployment of the Participant by the Company or a Participating Affiliate and (B) any bona fide and Company-approved or Participating Affiliate-approved leave of absence, such as family leave, parental leave, medical leave, personal leave, and military leave, or such other leave that meets the requirements of Treasury Regulations section 1.421-1(h)(2); *provided, however*, where the period of leave exceeds three (3) months and the employee’s right to reemployment is not guaranteed either by statute or by contract, the employee-employer relationship will be deemed to have terminated on the first day immediately following such three (3)-month period.

(bb) “**Trading Day**” shall mean a day on which The Nasdaq Stock Market LLC is open for trading.

3. SHARES SUBJECT TO THE PLAN

(a) Share Reserve. Subject to adjustment as provided in Section 12, the maximum number of shares of Stock that may be issued pursuant to ESPP Options granted under the Plan (including any Non-423(b) Offering established hereunder) is seven hundred fifty thousand (750,000) shares. The shares of Stock reserved for issuance under the Plan may be authorized but unissued shares, treasury shares, or shares purchased on the open market.

(b) Participation Adjustment as a Result of the Share Reserve. If the Administrator determines that the total number of shares of Stock remaining available under the Plan is insufficient to permit the number of shares of Stock to be purchased by all Participants on the last Trading Day of an Offering Period (or if an Offering Period has multiple Purchase Periods, on the last Trading Day of the Purchase Period) pursuant to Section 9, the Administrator shall make a participation adjustment, where the number of shares of Stock purchasable by all Participants shall be reduced proportionately in as uniform and equitable a manner as is reasonably practicable, as determined in the Administrator's sole discretion. After such adjustment, the Administrator shall refund in cash all affected Participants' Account balances for such Offering Period as soon as practicable thereafter.

(c) Applicable Law Limitations on the Share Reserve. If the Administrator determines that some or all of the shares of Stock to be purchased by Participants on the last Trading Day of an Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the Purchase Period) would not be issued in accordance with applicable laws or any approval by any regulatory body as may be required or the shares of Stock would not be issued pursuant to an effective Form S-8 registration statement or that the issuance of some or all of such shares of Stock pursuant to a Form S-8 registration statement is not advisable due to the risk that such issuance will violate applicable laws, the Administrator may, without Participants' consent, terminate any outstanding Offering Period and the ESPP Options granted thereunder and refund in cash all affected Participants' Account balances for such Offering Period as soon as practicable thereafter.

4. ADMINISTRATION

(a) Generally. The Plan shall be administered under the direction of the Administrator. Subject to the express provisions of the Plan, the Administrator shall have full authority, in its sole discretion, to take any actions it deems necessary or advisable for the administration of the Plan, including, without limitation:

(i) Interpreting and construing the Plan and ESPP Options granted under the Plan; prescribing, adopting, amending, suspending, waiving, and rescinding rules and regulations as it deems appropriate to administer and implement the Plan, including amending any outstanding ESPP Option, as it may deem advisable or necessary to comply with applicable laws; correcting any defect or supplying any omission or reconciling any inconsistency in the Plan or ESPP Options granted under the Plan; and making all other decisions and determinations necessary and advisable in administering the Plan;

(ii) Making determinations relating to eligibility;

(iii) Determining the Purchase Price;

(iv) Establishing the timing and length of Offering Periods and Purchase Periods;

(v) Establishing minimum and maximum contribution rates;

(vi) Establishing new or changing existing limits on the number of shares of Stock a Participant may elect to purchase with respect to any Offering Period, if such limits are announced prior to the first Offering Period to be affected;

(vii) Delegating to one or more individuals such duties and functions related to the operation and administration of the Plan as the Administrator so determines, except to the extent prohibited by applicable law;

(viii) Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws of any countries in which the Company and its Subsidiaries operate or have employees or other individuals eligible for grants under the Plan, adopting such rules, procedures, or sub-plans as may be deemed advisable or necessary to comply with the laws of countries other than the United States, to allow for tax-preferred treatment of the ESPP Options or otherwise to provide for the participation by Eligible Employees who reside outside of the United States, including determining which Eligible Employees are eligible to participate in the Non-423(b) Offering or other sub-plans established by the Administrator and taking any such action as necessary or advisable to obtain approval or to comply with any local governmental regulatory exemptions or approvals;

(ix) Establishing the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars and permitting payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the processing of properly completed Enrollment Forms; and

(x) Furnishing to the Custodian such information as the Custodian may require.

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The Administrator's determinations under the Plan shall be final, binding, and conclusive upon all persons.

(b) Custodian. If the Administrator designates a Custodian for the Plan, the Custodian shall act as custodian under the Plan and shall perform such duties as requested by the Administrator in accordance with any agreement between the Company and the Custodian. The Custodian shall establish and maintain, as agent for each Participant, an Account and any subaccounts as may be necessary or desirable for the administration of the Plan.

(c) No Liability. Neither the Board, the Compensation Committee of the Board, any other committee of the Board, or the Custodian, nor any of their respective agents or designees, shall be liable to any person (i) for any act, failure to act, or determination made in good faith with respect to the Plan or ESPP Options granted under the Plan or (ii) for any tax (including any interest and penalties) by reason of the failure of the Plan, an ESPP Option, or an Offering Period to satisfy the requirements of Code Section 423, the failure of the Participant to satisfy the requirements of Code Section 423, or otherwise asserted with respect to the Plan, ESPP Options granted under the Plan, or shares of Stock purchased or deemed purchased under the Plan.

5. PARTICIPATION IN THE PLAN AND IN AN OFFERING PERIOD

(a) Generally. An Eligible Employee may become a Participant for an Offering Period under the Plan by completing the prescribed Enrollment Form and submitting such Enrollment Form to the Company (or the Company's designee), in the format and pursuant to the process as prescribed by the Administrator, during the Enrollment Period prior to the commencement of the Offering Period to which it relates. If properly completed and timely submitted, the Enrollment Form will become effective for the first Offering Period following submission of the Enrollment Form and all subsequent Offering Periods as provided by Section 5(b) until (i) it is terminated in accordance with Section 11, (ii) it is modified by filing another Enrollment Form in accordance with this Section 5(a) (including an election is made to cease payroll deductions in accordance with Section 6(c)), or (iii) the Participant is otherwise ineligible to participate in the Plan or in a subsequent Offering Period.

(b) Automatic Re-Enrollment. Unless otherwise established by the Administrator prior to the start of an Offering Period, following the end of each Offering Period, each Participant shall automatically be re-enrolled in the next Offering Period at the applicable rate of payroll deductions in effect on the last Trading Day of the prior Offering Period or otherwise as provided under Section 6, unless (i) the Participant has experienced a Termination of Employment, or (ii) the Participant is otherwise ineligible to participate in the Plan or in the next Offering Period. Notwithstanding the foregoing, the Administrator may require current Participants to complete and submit a new Enrollment Form at any time it deems necessary or desirable to facilitate Plan administration or for any other reason.

6. PAYROLL DEDUCTIONS

(a) Generally. Each Participant's Enrollment Form shall contain a payroll deduction authorization pursuant to which he or she shall elect, unless otherwise established by the Administrator prior to the start of an Offering Period, to have a designated whole percentage of Eligible Compensation between one percent (1%) and fifteen percent (15%) deducted, on an after-tax basis, on each payday during the Offering Period and credited to the Participant's Account for the purchase of shares of Stock pursuant to the offering. Notwithstanding the foregoing, if local law prohibits payroll deductions, a Participant may elect to participate in an Offering Period through contributions to his or her Account in a format and pursuant to a process acceptable to the Administrator. In such event, any such Participant shall be deemed to participate in a separate offering under the Plan, unless the Administrator otherwise expressly provides.

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(b) Insufficiency of Contributions. Subject to Section 6(e), if in any payroll period a Participant has no pay or his or her pay is insufficient (after other authorized deductions) to permit deduction of the full amount of his or her payroll deduction election, then (i) the payroll deduction election for such payroll period shall be reduced to the amount of pay remaining, if any, after all other authorized

deductions, and (ii) the percentage or dollar amount of Eligible Compensation shall be deemed to have been reduced by the amount of the reduction in the payroll deduction election for such payroll period. Deductions of the full amount originally elected by the Participant will recommence as soon as his or her pay is sufficient to permit such payroll deductions; *provided, however*, no additional amounts shall be deducted to satisfy the Outstanding Election.

(c) Cessation after Offering Date. A Participant may cease his or her payroll deductions during an Offering Period by properly completing and timely submitting a new Enrollment Form to the Company (or the Company's designee), in the format and pursuant to the process as prescribed by the Administrator, at any time prior to the last day of such Offering Period (or if an Offering Period has multiple Purchase Periods, the last day of such Purchase Period). Any such cessation in payroll deductions shall be effective as soon as administratively practicable thereafter and shall remain in effect for successive Offering Periods as provided in Section 5(b) unless the Participant submits a new Enrollment Form for a later Offering Period in accordance with Section 5(a). A Participant may only increase or decrease his or her rate of payroll deductions in accordance with Section 6(d).

(d) Modification Prior to Offering Date. A Participant may increase or decrease his or her rate of payroll deductions, to take effect on the Offering Date of the Offering Period following submission of the Enrollment Form, by properly completing and timely submitting a new Enrollment Form in accordance with Section 5(a).

(e) Authorized Leave or Disability after Offering Date. Subject to Section 11, if a Participant is absent from work due to an authorized leave of absence or disability (and has not experienced a Termination of Employment), such Participant shall have the right to elect (i) to remain a Participant in the Plan for the then-current Offering Period (or if an Offering Period has multiple Purchase Periods, the then-current Purchase Period) but to cease his or her payroll deductions in accordance with Section 6(c), or (ii) to remain a Participant in the Plan for the then-current Offering Period (or if an Offering Period has multiple Purchase Periods, the then-current Purchase Period) but to authorize payroll deductions to be made from payments made by the Company or a Participating Affiliate to the Participant during such leave of absence or disability, and to undertake to make additional cash payments to the Plan at the end of each payroll period during the Offering Period to the extent that the payroll deductions from payments made by the Company or a Participating Affiliate to such Participant are insufficient to meet such Participant's Outstanding Election. Neither the Company nor a Participating Affiliate shall advance funds to a Participant if the Participant's payroll deductions during the Participant's leave of absence or disability are insufficient to fund the Participant's Account at his or her Outstanding Election.

(f) Withdrawal. At any time during an Offering Period, a Participant may terminate his or her payroll deductions under the Plan and withdraw from the Offering Period by submitting to the Company, or a third party designated by the Administrator, a notice of withdrawal in such form as the Company requires. Such withdrawal may be elected at any time, but must be received prior to the end of the Offering Period in accordance with the withdrawal deadline and other procedures established by the Administrator. Upon withdrawal from the Offering Period by a Participant, the Company shall distribute to such Participant all of his or her remaining accumulated payroll deductions under the Offering Period, without interest, and such Participant's interest in the Offering Period shall be automatically terminated. A Participant's withdrawal from an Offering Period will have no effect on his or her eligibility to participate in subsequent Offering Periods that commence after the termination of the Offering Period from which the Participant withdraws, but the Participant will be required to complete and submit a new Enrollment Form in order to participate in subsequent Offering Periods under the Plan. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan, which may hereafter be adopted by the Company.

7. OFFERING PERIODS AND PURCHASE PERIODS; PURCHASE PRICE

(a) The Administrator shall determine from time to time, in its sole discretion, the Offering Periods and Purchase Periods under the Plan. Each Offering Period shall consist of one or more Purchase Periods, as determined by the Administrator. Unless otherwise established by the Administrator prior to the start of an Offering Period, the Plan shall have two (2) Offering Periods (with concurrent Purchase Periods) that commence each calendar year, and each Offering Period shall be of approximately six (6) months' duration, with the first such Offering Period beginning on the first Trading Day of January and ending on the last Trading Day of the immediately following June, and the second such Offering Period beginning on the first Trading Day of July and ending on the last Trading Day of the immediately following December; *provided, however*, that the first Offering Period under the Plan shall commence on the first Trading Day of July following the Effective Date and shall end on the last Trading Day of the immediately following December.

(b) The Administrator shall determine from time to time, in its sole discretion, the Purchase Price of each share of Stock for an Offering Period; *provided, however*, that the Purchase Price shall not be less than the lesser of (i) eighty-five percent (85%) of the Fair Market Value of a share of Stock on the first Trading Day of the Offering Period and (ii) eighty-five percent (85%) of the Fair Market

Value of a share of Stock on the last Trading Day of the Offering Period (or if an Offering Period has multiple Purchase Periods, on the last Trading Day of the Purchase Period). Unless otherwise established by the Administrator prior to the start of an Offering Period, the Purchase Price shall be equal to the lesser of (x) eighty-five percent (85%) of the Fair Market Value of a share of Stock on the first Trading Day of the Offering Period and (y) eighty-five percent (85%) of the Fair Market Value of a share of Stock on the last Trading Day of the Offering Period.

8. GRANT OF ESPP OPTION

(a) Grant of ESPP Option. On each Offering Date, each Participant in such Offering Period shall automatically be granted an ESPP Option to purchase as many whole shares of Stock as the Participant will be able to purchase with the payroll deductions credited to the Participant's Account during the applicable Offering Period.

(b) 5% Owner Limit. Notwithstanding any provisions of the Plan to the contrary, no Participant shall be granted an ESPP Option to purchase shares of Stock under the Plan if such Participant (or any other person whose Stock would be attributed to such Participant pursuant to Code Section 424(d)), immediately after such ESPP Option is granted, would own or hold ESPP Options to purchase shares of Stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or any of its Subsidiaries.

(c) Other Limitation. The Administrator may determine, as to any Offering Period, that the offering shall not be extended to "highly compensated employees" within the meaning of Code Section 414(q).

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9. PURCHASE OF SHARES OF STOCK; PURCHASE LIMITATIONS

(a) Purchase. Unless the Participant's participation in the Plan has otherwise been terminated as provided in Section 11, such Participant will be deemed to have automatically exercised his or her ESPP Option to purchase Stock on the last Trading Day of the Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the Purchase Period) for the maximum number of shares of Stock that may be purchased at the Purchase Price with the Participant's Account balance at that time; *provided, however*, the number of shares of Stock purchased is subject to adjustment by Section 3, this Section 9, and Section 12. The Administrator shall cause the amount credited to each Participant's Account to be applied to such purchase, and the amount applied to purchase shares of Stock pursuant to an ESPP Option shall be deducted from the applicable Participant's Account.

(b) Limit on Number of Shares Purchased. Notwithstanding Section 8(a) or Section 9(a), in no event may a Participant purchase more than ten thousand (10,000) shares of Stock in any one Offering Period; *provided, however*, that the Administrator may, in its sole discretion, prior to the start of an Offering Period, set a different limit on the number of shares of Stock a Participant may purchase during such Offering Period.

(c) Limit on Value of Shares Purchased. Notwithstanding any provisions of the Plan to the contrary, excluding ESPP Options granted pursuant to any Non-423(b) Offering, no Participant shall be granted an ESPP Option to purchase shares of Stock under the Plan which permits the Participant's rights to purchase shares under all "employee stock purchase plans" (described in Code Section 423) of the Company and its Subsidiaries to accrue at a rate which exceeds twenty-five thousand dollars (\$25,000) of the aggregate Fair Market Value of such shares of Stock (determined at the time such ESPP Options are granted) for each calendar year in which such ESPP Options are outstanding at any time.

(d) No Fractional Shares. Notwithstanding any provisions of the Plan to the contrary, no Participant may exercise an ESPP Option to purchase less than one whole share of Stock, certificates representing fractional shares will not be delivered to Participants under any circumstances, and any ESPP Option to purchase less than one whole share of Stock shall be automatically terminated on the last Trading Day of the Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the Purchase Period). Unless the Participant's participation in the Plan has otherwise been terminated as provided in Section 11 or the Participant withdraws from the Plan as provided in Section 6(f), the portion of a Participant's Account balance remaining as a result of a Participant's inability to exercise an ESPP Option to purchase less than one whole share of Stock shall be accumulated and retained in the Participant's Account for the subsequent Purchase Period.

10. STOCK ISSUANCE; STOCKHOLDER RIGHTS; AND SALES OF PLAN SHARES

(a) Stock Issuance and Account Statements. Shares of Stock purchased under the Plan will be held by the Custodian. The Custodian may hold the shares of Stock purchased under the Plan by book entry or in the form of stock certificates in nominee names and may commingle shares held in its custody in a single account without identification as to individual Participants. The Company shall cause the Custodian to deliver to each Participant a statement for each Offering Period during which the Participant purchases Stock under the Plan, which statement shall reflect, for each such Participant, (i) the amount of payroll deductions withheld during the Offering Period, (ii) the number of shares of Stock purchased, (iii) the aggregate Purchase Price of the shares of Stock purchased, (iv) the Purchase Price per share, (v) the brokerage fees and commissions paid (if any), and (vi) the total number of shares of Stock held by the Custodian for the Participant as of the end of the Offering Period.

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(b) Stockholder Rights. A Participant shall not be a stockholder or have any rights as a stockholder with respect to shares of Stock subject to the Participant's ESPP Options under the Plan until the shares of Stock are purchased pursuant to the ESPP Options and such shares of Stock are transferred into the Participant's name on the Company's books and records. No adjustment will be made for dividends or other rights for which the record date is prior to such time. Following purchase of shares of Stock under the Plan and transfer of such shares of Stock into the Participant's name on the Company's books and records, a Participant shall become a stockholder with respect to the shares of Stock purchased during such Offering Period (or, if applicable, Purchase Period) and, except as otherwise provided in Section 10(c), shall thereupon have all dividend, voting, and other ownership rights incident thereto.

(c) Sales of Plan Shares. The Administrator shall have the right to require any or all of the following with respect to shares of Stock purchased under the Plan:

(i) that a Participant may not request that all or part of the shares of Stock be reissued in the Participant's own name and shares be delivered to the Participant until two (2) years (or such shorter period of time as the Administrator may designate) have elapsed since the Offering Date of the Offering Period in which the shares were purchased and one (1) year has elapsed since the day the shares were purchased (the "**Holding Period**");

(ii) that all sales of shares of Stock during the Holding Period applicable to such purchased shares be performed through a licensed broker acceptable to the Company; and

(iii) that Participants abstain from selling or otherwise transferring shares of Stock purchased pursuant to the Plan for a period lasting up to two (2) years from the date the shares of Stock were purchased pursuant to the Plan.

Any Participant who sells or otherwise transfers shares of Stock purchased under the Plan within two (2) years after the beginning of the Offering Period in which the shares were purchased or within one (1) year from the date the shares of Stock were purchased must, within ten (10) days of such transfer, notify the Company in writing of such transfer.

11. DEEMED CANCELLATION OR TERMINATION OF PARTICIPATION

(a) Termination of Employment Other than Death. In the event a Participant who holds outstanding ESPP Options to purchase shares of Stock under the Plan experiences a Termination of Employment for any reason other than death prior to the last Trading Day of the Offering Period, the Participant's outstanding ESPP Options to purchase shares of Stock under the Plan shall automatically terminate, and the Administrator shall refund in cash the Participant's Account balance as soon as practicable thereafter.

(b) Death. In the event of the death of a Participant while the Participant holds outstanding ESPP Options to purchase shares of Stock under the Plan, the legal representatives of such Participant's estate (or, if the Administrator permits a beneficiary designation, the beneficiary or beneficiaries most recently designated by the Participant prior to his or her death) may, within three (3) months after the Participant's death (but no later than the last Trading Day of the Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the then-current Purchase Period)) by written notice to the Company (or the Company's designee), elect one of the following alternatives:

(i) The Participant's outstanding ESPP Options shall be reduced to the number of shares of Stock that may be purchased, as of the last day of the Offering Period (or if an Offering Period has multiple Purchase Periods, the last Trading Day of the then-current Purchase Period), with the amount then credited to the Participant's Account; or

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(ii) The Participant's ESPP Options to purchase shares of Stock under the Plan shall automatically terminate, and the Administrator shall refund in cash, to the Participant's legal representatives, the Participant's Account balance as soon as practicable thereafter.

In the event the Participant's legal representatives (or, if applicable, beneficiary or beneficiaries) fail to deliver such written notice to the Company (or the Company's designee) within the prescribed period, the alternative in [Section 11\(b\)\(ii\)](#) shall apply.

(c) Other Termination of Participation. If a Participant ceases to be eligible to participate in the Plan for any reason, the Administrator shall refund in cash the affected Participant's Account balance as soon as practicable thereafter. Once terminated, participation may not be reinstated for the then-current Offering Period, but, if otherwise eligible, the Eligible Employee may elect to participate in a subsequent Offering Period in accordance with [Section 5](#).

12. CHANGES IN CAPITALIZATION

(a) Changes in Stock. If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number or kind of shares or other securities of the Company by reason of any recapitalization, reclassification, stock split, reverse stock split, spin-off, combination of shares, exchange of shares, stock dividend, or other distribution payable in capital stock, or other increase or decrease in such shares effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares that may be purchased under the Plan (including, for the avoidance of doubt, the numerical limits of [Sections 3\(a\)](#) and [9\(b\)](#)) shall be adjusted proportionately and accordingly by the Administrator. In addition, the number and kind of shares for which ESPP Options are outstanding shall be similarly adjusted so that the proportionate interest of a Participant immediately following such event shall, to the extent practicable, be the same as immediately prior to such event. Any such adjustment in outstanding ESPP Options shall not change the aggregate Purchase Price payable by a Participant with respect to shares subject to such ESPP Options but shall include a corresponding proportionate adjustment in the Purchase Price per share. Notwithstanding the foregoing, in the event of a spin-off that results in no change in the number of outstanding shares of Stock, the Company may, in such manner as the Company deems appropriate, adjust (i) the number and kind of shares for which ESPP Options are outstanding under the Plan and (ii) the Purchase Price per share.

(b) Reorganization in Which the Company Is the Surviving Corporation. Subject to [Section 12\(c\)](#), if the Company shall be the surviving corporation in any reorganization, merger, or consolidation of the Company with one or more other corporations, all outstanding ESPP Options under the Plan shall pertain to and apply to the securities to which a holder of the number of shares of Stock subject to such ESPP Options would have been entitled immediately following such reorganization, merger, or consolidation, with a corresponding proportionate adjustment of the Purchase Price per share so that the aggregate Purchase Price thereafter shall be the same as the aggregate Purchase Price of the shares subject to such ESPP Options immediately prior to such reorganization, merger, or consolidation.

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(c) Reorganization in Which the Company Is Not the Surviving Corporation; Change in Control. Upon any dissolution or liquidation of the Company, or upon a merger, consolidation, or reorganization of the Company with one or more other corporations in which the Company is not the surviving corporation, or upon a Change in Control, the Plan and all ESPP Options outstanding hereunder shall terminate, except to the extent provision is made in writing in connection with such transaction for the continuation of the Plan and/or the assumption of the ESPP Options theretofore granted, or for the substitution for such ESPP Option of new rights covering the stock of a successor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kinds of shares and purchase prices, in which event the Plan and rights theretofore granted shall continue in the manner and under the terms so provided. In the event of any such termination of the Plan, the Offering Period and the Purchase Period shall be deemed to have ended on the last Trading Day prior to such termination, and in accordance with [Section 9](#), the ESPP Options of each Participant then outstanding shall be deemed to be automatically exercised on such last Trading Day. The Administrator shall send written notice of an event that will result in such a termination to all Participants at least five (5) days prior to the date upon which the Plan will be terminated.

(d) Adjustments. Adjustments under this [Section 12](#) related to stock or securities of the Company shall be made by the Administrator, whose determination in that respect shall be final, binding, and conclusive.

(e) No Limitations on Company. The grant of an ESPP Option pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve or liquidate, or to sell or transfer all or any part of its business or assets.

13. TERM; AMENDMENT, SUSPENSION, AND TERMINATION OF THE PLAN

(a) Term. The Plan shall be effective as of the Effective Date. The Plan shall, without further action of the Board, terminate on the first to occur of (i) the day before the tenth (10th) anniversary of the Effective Date, (ii) the date on which all shares of Stock reserved for issuance under the Plan pursuant to Section 3 have been issued, (iii) the date determined in accordance with Section 12, and (iv) the date determined in accordance with Section 13(b).

(b) Amendment, Suspension, and Termination of the Plan. The Administrator may, at any time and from time to time, amend, suspend, or terminate the Plan or an Offering Period under the Plan; *provided, however*, that no amendment, suspension, or termination shall, without the consent of the Participant, materially impair any rights of a Participant that have vested at the time of such amendment, suspension, or termination. Without approval of the stockholders of the Company, no amendment shall be made (i) increasing the number of shares reserved for issuance under the Plan pursuant to Section 3 (except as provided in Section 12) or (ii) changing the eligibility requirements for participating in the Plan.

14. GENERAL PROVISIONS

(a) Withholding of Taxes. To the extent that a Participant recognizes ordinary income in connection with a sale or other transfer of any shares of Stock purchased under the Plan, the Company may withhold amounts needed to cover such taxes from any payments otherwise due and owing to the Participant or from shares that would otherwise be issued to the Participant under the Plan.

(b) ESPP Options Not Transferable or Assignable. A Participant's ESPP Options under the Plan may not be sold, pledged, assigned, or transferred in any manner, whether voluntarily, by operation of law, or otherwise. If a Participant sells, pledges, assigns, or transfers his or her ESPP Options in violation of this Section 14(b), such ESPP Options shall immediately terminate, and the Participant shall immediately receive a refund of the amount then credited to the Participant's Account. Any payment of cash or issuance of shares of Stock under the Plan may be made only to the Participant (or, in the event of the Participant's death, to the Participant's estate or, if the Administrator permits a beneficiary designation, the beneficiary or beneficiaries most recently designated by the Participant prior to his or her death). During a Participant's lifetime, only such Participant may exercise his or her ESPP Options under the Plan.

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(c) No Right to Continued Employment. Neither the Plan nor any ESPP Option to purchase Stock under the Plan confers upon any Eligible Employee or Participant any right to continued employment with the Company or any of its Subsidiaries, nor will a Participant's participation in the Plan restrict or interfere in any way with the right of the Company or any of its Subsidiaries to terminate the Participant's employment at any time.

(d) No Interest on Payments. No interest shall be paid on sums withheld from a Participant's pay or otherwise contributed for the purchase of shares of Stock under the Plan unless otherwise determined necessary by the Administrator.

(e) Governmental Regulation. The Company's obligation to issue, sell, and deliver shares of Stock pursuant to the Plan is subject to such approval of any governmental authority and any national securities exchange or other market quotation system as may be required in connection with the authorization, issuance, or sale of such shares.

(f) Rule 16b-3. Transactions under this Plan are intended to comply with all applicable conditions of Rule 16b-3 or any successor provision under the Securities Exchange Act of 1934, as amended. If any provision of the Plan or action by the Administrator fails to so comply, it shall be deemed null and void to the extent permitted by applicable law and deemed advisable by the Board. Moreover, in the event the Plan does not include a provision required by Rule 16b-3 to be stated in the Plan, such provision (other than one relating to eligibility requirements or the price and amount of awards) shall be deemed automatically to be incorporated by reference into the Plan.

(g) Payment of Plan Expenses. The Company shall bear all costs of administering and carrying out the Plan.

(h) Application of Funds. All funds received or held by the Company under the Plan may be used for any corporate purpose until applied to the purchase of Stock and/or refunded to Participants. Participants' Accounts need not be segregated.

(i) Governing Law. The validity and construction of the Plan and the ESPP Options granted hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware (other than any conflicts or choice of law rule

or principle that might otherwise refer construction or interpretation of the Plan and the ESPP Options granted under the Plan to the substantive laws of any other jurisdiction), except to the extent superseded by applicable U.S. federal laws.

* * *

To record adoption of the Plan by the Board as of January 9, 2021 and approval of the Plan by the Company's stockholders as of March 4, 2021, the Company has caused its authorized officer to execute the Plan.

BEYOND AIR, INC.

By: /s/ Steven A. Lisi

Name: Steven A. Lisi

Title: Chief Executive Officer

*Signature Page to the
Beyond Air, Inc. 2021 Employee Stock Purchase Plan*

**Beyond Air, Inc. 2021 Employee Stock Purchase Plan
Sub-Plan for Participants in Ireland**

- Application.** This Sub-Plan for Participants in Ireland (the "Sub-Plan") sets forth additional terms and conditions applicable to rights granted to, and shares of Stock purchased by, Eligible Employees who are (or are deemed to be) residents of Ireland for purposes of the payment of taxes or who exercise all of their employment duties in Ireland, and forms and integral part of the Plan. The Company will, in its discretion, determine the extent to which the terms and conditions in this Sub-Plan apply to a Participant.
- 1.

The Plan and this Sub-Plan are complementary to each other and shall be deemed as one. In any case of contradiction with respect to ESPP Options granted to Eligible Employees, whether explicit or implied, between the provisions of this Sub-Plan and the Plan, the provisions set out in this Sub-Plan shall prevail.

- No Obligation to Continue Employment Relationship. Neither the Company nor any Subsidiary is obligated by or as a result of the Plan or any Enrollment Form to continue the Participant's employment with the Company or a Subsidiary, and neither the Plan nor any Enrollment Form shall interfere in any way with the right of the Company or any Subsidiary to terminate the Participant's employment with the Company or a Subsidiary at any time. Nothing in the Plan or any Enrollment Form (including, but not limited to, the issuance of the shares of Stock in respect of the Participant's ESPP Option) or any covenant of good faith and fair dealing that may be found implicit in the Plan or any Enrollment Form shall: (i) constitute any promise or commitment by the Company or a Subsidiary regarding the fact or nature of future positions, future work assignments, future compensation or any other term or condition of service or affiliation; (ii) confer any right or benefit under the Plan or any Enrollment Form unless such right or benefit has specifically accrued under the terms of the Plan or Enrollment Form. The grant of an ESPP Option to a Participant shall in no way affect the Company's right to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets. By participating in the Plan, a Participant waives all rights to compensation for any loss in relation to the Plan, including: any loss of profit; any loss or reduction of any rights or expectations under the Plan in any circumstances or for any reason (including lawful or unlawful termination of the Participant's employment with the Company or a Subsidiary); any exercise of a discretion or a decision taken in relation to the Plan, or any failure to exercise a discretion or take a decision; or the operation, suspension, termination or amendment of the Plan.
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3. Data Privacy Consent.

- a. By accepting the grant of an ESPP Option, a Participant acknowledges that his or her Personal Data will be processed and disclosed as follows:

- by the Company or any Subsidiary which has employed the Participant as they are required to collect, process and utilize certain Personal Data pertaining to the Participant for purposes directly relevant to the
- i. ESPP Option issued to the Participant, and to disclose or transfer such information to other Subsidiaries and, if necessary, a third party (including any broker, registrar or administrator) for the purpose of administering the Plan;

- ii. by the Company or any Subsidiary which has employed the Participant and any such third party so that they may utilize such information for the purpose of administering the Plan, provided that such information shall be kept confidential and shall not be used by any of them for any purposes not related to the administration of the Plan;

- iii. by the Company and any Subsidiary which has employed the Participant and any such third party (any of which may be located in the European Union (“EU”) or outside of the EU) so that they may transfer the Personal Data pertaining to the Participant in the EU or outside of the EU for the purpose of administering the Plan (in which case the transfer shall be governed by “model contract clauses” or equivalent measures required under EU data protection laws); and

- iv. by and to any future purchaser of the Company or Subsidiary which has employed the Participant, or any future purchaser of their respective undertakings or any parts thereof, for the purpose of administering the Plan and/or confirming the Participant’s entitlement to an ESPP Option and/or any shares of Stock where such entitlement is relevant to such purchase.

- Each Participant acknowledges that the purposes described in sub-paragraph (a) above are necessary for the performance of the Plan or are otherwise necessary for the legitimate interests of the Company or any Subsidiary which has employed the Participant in connection with the administration of the Plan. Should the Participant exercise any
- b. data subject rights in relation to his or her Personal Data, such as the right of objection or erasure, the Participant acknowledges that it may no longer be possible to administer the Plan in respect of the Participant. In that case the Participant’s ESPP Option may lapse and the Participant shall be deemed to have waived (without any right to compensation) any right to shares of Stock under the Plan.

- Each Participant shall be provided with the information regarding the following by the Company or any Subsidiary
- c. which has employed the Participant to the extent that they are acting as controllers of the Participant’s Personal Data (save where the Participant already has the information):

- i. the purpose of the collection and use of the Personal Data pertaining to the Participant;
- ii. the information to be collected and used;
- iii. the period and method of retention and use of the personal information or other relevant information pertaining to the Participant;
- iv. details of any third parties to whom their information is disclosed or transferred including the purpose of such disclosure or transfer and, where applicable, the safeguards applied to any transfers of data outside of the EU;
- v. the rights of the Participant in respect of access to, rectification and deletion of their information and any related disadvantages;
- vi. where applicable, the contact details of the data protection officer of the relevant controller; and
- vii. the right to complain to the relevant data protection supervisory authority.

In this section, “Personal Data” has the same meaning as in the EU General Data Protection Regulation 2016/679 or any equivalent legislation in any non-EU jurisdiction.

