

# SECURITIES AND EXCHANGE COMMISSION

## FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2023-08-25**  
SEC Accession No. [0001193125-23-221504](#)

([HTML Version](#) on [secdatabase.com](#))

### SUBJECT COMPANY

#### **Greenbrook TMS Inc.**

CIK: **1735948** | IRS No.: **000000000** | State of Incorporation: **A6** | Fiscal Year End: **1231**  
Type: **SC 13D/A** | Act: **34** | File No.: **005-92606** | Film No.: **231208475**  
SIC: **8090** Misc health & allied services, nec

Mailing Address  
890 YONGE STREET, 7TH  
FLOOR  
TORONTO A6 M4W 3P4

Business Address  
890 YONGE STREET, 7TH  
FLOOR  
TORONTO A6 M4W 3P4  
416-322-9700

### FILED BY

#### **Madryn Asset Management, LP**

CIK: **1787423** | IRS No.: **814386857** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **SC 13D/A**

Mailing Address  
330 MADISON AVENUE  
33RD FLOOR  
NEW YORK NY 10017

Business Address  
330 MADISON AVENUE  
33RD FLOOR  
NEW YORK NY 10017  
6465605493

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

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**SCHEDULE 13D/A**

**Under the Securities Exchange Act of 1934  
(Amendment No. 1)\***

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**Greenbrook TMS Inc.**  
(Name of Issuer)

**Common Stock, no par value**  
(Title of Class of Securities)

**3937043309**  
(CUSIP Number)

**Matthew Girandola**  
**330 Madison Avenue - Floor 33**  
**New York, NY 10017**  
**(646) 560-5490**  
(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

**August 15, 2023**  
(Date of Event Which Requires Filing of This Statement)

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If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, *see* the Notes).

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1	NAMES OF REPORTING PERSONS <b>MADRYN ASSET MANAGEMENT, LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; AF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>13,902,877</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>13,902,877</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>13,902,877</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>27.8%</b>	
14	TYPE OF REPORTING PERSON  <b>IA</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN HEALTH PARTNERS II, LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>PF; OO</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>822,626</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>822,626</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>822,626</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>1.6%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN HEALTH PARTNERS II (CAYMAN MASTER), LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS <b>PF; OO</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION <b>CAYMAN ISLANDS</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>12,482,165</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>12,482,165</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>12,482,165</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>25.0%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN HEALTH ADVISORS II, LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; AF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>13,304,791</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>13,304,791</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>13,304,791</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>26.6%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN HEALTH ADVISORS GP II, LLC</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; AF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>13,304,791</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>13,304,791</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>13,304,791</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>26.6%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN SELECT OPPORTUNITIES, LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; PF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>598,086</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>598,086</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>598,086</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>1.2%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	



1	NAMES OF REPORTING PERSONS <b>MADRYN SELECT ADVISORS, LP</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; AF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>598,086</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>598,086</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>598,086</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>1.2%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

1	NAMES OF REPORTING PERSONS <b>MADRYN SELECT ADVISORS GP, LLC</b>	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP  (a) <input type="checkbox"/> (b) <input type="checkbox"/>	
3	SEC USE ONLY	
4	SOURCE OF FUNDS  <b>OO; AF</b>	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)  <input type="checkbox"/>	
6	CITIZENSHIP OR PLACE OF ORGANIZATION  <b>STATE OF DELAWARE, UNITED STATES OF AMERICA</b>	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER  <b>0</b>
	8	SHARED VOTING POWER  <b>598,086</b>
	9	SOLE DISPOSITIVE POWER  <b>0</b>
	10	SHARED DISPOSITIVE POWER  <b>598,086</b>
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON  <b>598,086</b>	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES  <input type="checkbox"/>	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)  <b>1.2%</b>	
14	TYPE OF REPORTING PERSON  <b>PN</b>	

**Explanatory Note**

This Amendment No. 1 (this "Amendment No. 1") amends and supplements the Schedule 13D originally filed by the Reporting Persons (as defined below) with the Securities and Exchange Commission on April 3, 2023 (the "Original Schedule 13D" and, as amended by this Amendment No. 1, this "Schedule 13D").

**ITEM 1. SECURITY AND ISSUER.**

This Schedule 13D (the "Statement") relates to the common stock, no par value (the "Common Stock"), of Greenbrook TMS Inc., an Ontario corporation (the "Company"). The Company's principal executive offices are located at 890 Yonge Street, 7th Floor, Toronto, Ontario, Canada M4W 3P4.

**ITEM 2. IDENTITY AND BACKGROUND.**

(a) This Statement is filed by the following persons (the "Reporting Persons"):

<u>Reporting Person</u>	<u>State of Organization</u>
Madryn Asset Management, LP (" <u>Madryn</u> ")	Delaware
Madryn Health Partners II, LP (" <u>MHP II</u> ")	Delaware
Madryn Health Partners II (Cayman Master), LP (" <u>MHP II Cayman</u> ")	Cayman Islands
Madryn Select Opportunities, LP (" <u>MSO</u> " and, together with MHP II and MHP II Cayman, the " <u>Funds</u> ")	Delaware
Madryn Health Advisors II, LP (" <u>MHA II LP</u> ")	Delaware
Madryn Health Advisors GP II, LLC (" <u>MHA GP II LLC</u> ")	Delaware
Madryn Select Advisors, LP (" <u>MSA LP</u> ")	Delaware
Madryn Select Advisors GP, LLC (" <u>MSA GP LLC</u> " and, together with MHA II LP, MHA GP II LLC, and MSA LP the " <u>Advisors</u> ")	Delaware

(b) The principal business and principal office address for each of the Reporting Persons is 330 Madison Avenue - Floor 33, New York, NY 10017.

(c)(f) The principal business or occupation of each Reporting Person is as follows:

<u>Reporting Person</u>	<u>Principal Business or Occupation</u>
Madryn	Investment advisor of the Funds
Funds	Investment Fund
Advisors	General partner of the Funds

A list of Madryn's directors, executive officers and managers (collectively, the "Covered Persons") is set forth below. To the knowledge of the Reporting Persons, each of the Covered Persons that is a natural person is a United States citizen. Other than as set forth below, none of the Reporting Persons have appointed any executive officers or directors:

<u>Name</u>	<u>Principal Occupation</u>
Avinash Amin	Member
John Ricciardi	Chief Financial Officer/Chief Operating Officer
Matthew Girandola	Chief Compliance Officer

(d) During the last five years, none of the Reporting Persons or, to their knowledge, none of the Covered Persons, has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors).

(e) During the last five years, none of the Reporting Persons or, to their knowledge, none of the Covered Persons, has been a party to a civil proceeding of any judicial or administrative body of competent jurisdiction and, as a result of which they were or are subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws.

### ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

On July 14, 2022, the Company entered into a credit agreement in connection with a \$75.0 million secured credit facility (the "Credit Facility") with Madryn and its affiliates. The Credit Facility permitted the Company to draw \$55.0 million in combined Term A and Term B tranches up front and further provided the Funds with the option to convert up to \$5.0 million of the outstanding principal amount of the loan into Common Stock at a price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange prior to each such issuance.

On February 1, 2023, the Company entered into an amendment to the Credit Facility whereby Madryn and its affiliates extended an additional tranche of debt financing to the Company in an aggregate principal amount of \$2.0 million (the "Term D Loan"). The Term D Loan further provided MHP II and MHP II Cayman with the option to convert up to approximately \$182,000 of the outstanding principal amount of the Term D Loan into Common Stock at a conversion price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange.

On February 21, 2023, the Company entered into an amendment to the Credit Facility whereby Madryn and its affiliates extended an additional tranche of debt financing to the Company in an aggregate principal amount of \$2.0 million (the "Term E Loan"). The Term E Loan further provided MHP II and MHP II Cayman with the option to convert up to approximately \$182,000 of the outstanding principal amount of the Term E Loan into Common Stock at a conversion price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange.

On March 20, 2023, the Company entered into an amendment to the Credit Facility whereby Madryn and its affiliates extended an additional tranche of debt financing to the Company in an aggregate principal amount of \$1.0 million (the "Term F Loan"). The Term F Loan further provided MHP II and MHP II Cayman with the option to convert up to approximately \$91,000 of the outstanding principal amount of the Term F Loan into Common Stock at a conversion price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange.

On March 23, 2023, the Company completed a non-brokered private placement (the "Private Placement") of 11,363,635 shares of Common Stock, at a price of \$0.55 per share, for aggregate gross proceeds of approximately \$6.25 million. In connection with the Private Placement, MHP II and MHP II Cayman acquired 6,363,636 shares of Common Stock.

On March 24, 2023, the Company entered into an amendment to the Credit Facility whereby Madryn and its affiliates extended an additional tranche of debt financing to the Company in an aggregate principal amount of \$1.0 million (the "Term G Loan"). The Term G Loan further provided MHP II and MHP II Cayman with the option to convert up to approximately \$91,000 of the outstanding principal amount of the Term G Loan into Common Stock at a conversion price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange.

On August 1, 2023, the Company entered into an amendment to the Credit Facility whereby Madryn and its affiliates extended an additional tranche of debt financing to the Company in an aggregate principal amount of \$2.0 million (the "Term H Loan"). The Term H Loan further provided MHP II and MHP II Cayman with the option to convert up to approximately \$182,000 of the outstanding principal amount of the Term H Loan into Common Stock at a conversion price per share equal to \$1.90, subject to customary anti-dilution adjustments and approval of the Toronto Stock Exchange.

On August 15, 2023, the Company entered into a note purchase agreement with Greybrook Health Inc., MHP II and MHP II Cayman whereby the Company issued and sold \$2.0 million aggregate principal amount of unsecured subordinated convertible promissory notes (the "Subordinated Convertible Notes"). The Subordinated Convertible Notes are convertible into Common Stock at any time at the election of holders of the Subordinated Convertible Notes, or on a mandatory basis by all noteholders at the request of certain affiliates of Madryn, at a conversion price equal to the lesser of (a) 85% of the closing price per share of Common Stock as of the date of issuance of the Subordinated Convertible Notes and (b)(i) 85% of the 30-day volume weighted average trading price per share of Common Stock immediately prior to the date of exercise, or (ii) if the shares of Common Stock are not listed on Nasdaq or another national exchange at the time of conversion, a per share price equal to 85% of the fair market value per share of Common Stock as of such date (determined in good faith for such purposes by the Company's board of directors, acting reasonably); provided, that, in any event, the conversion price shall not be lower than \$0.078. The conversion price is also subject to customary anti-dilution adjustments, with the conversion price in effect as of August 15, 2023 being \$0.3315.

The funds used to make such loans and acquire beneficial ownership of the shares reported herein were composed of the investment capital of the applicable Funds.

#### **ITEM 4. PURPOSE OF THE TRANSACTION.**

The information set forth in Items 3 and 6 of this Statement is hereby incorporated by reference into this Item 4.

The Reporting Persons acquired the securities reported herein for investment purposes and intend to review their investments in the Company on a continuing basis. Depending on various factors, including but not limited to the Company's financial position and strategic direction, price levels of the Common Stock, conditions in the securities markets, various laws and regulations applicable to the Company and companies in its industry and the Reporting Persons' ownership in the Company and position as lender to the Company, and general economic and industry conditions, the Reporting Persons may in the future take actions with respect to their investment in the Company as they deem appropriate, including changing their current intentions, with respect to any or all matters required to be disclosed herein. Without limiting the foregoing, and subject to any applicable limitations described in Item 6 below, the Reporting Persons may, from time to time, acquire or cause affiliates to acquire additional shares of Common Stock or other securities of the Company (including any combination or derivative thereof), dispose, or cause affiliates to dispose, of some or all of their Common Stock or other securities of the Company or continue to hold, or cause affiliates to hold, Common Stock or other securities of the Company.

In addition, the Reporting Persons have had and intend to continue having discussions, from time to time, with management and the board of directors of the Company, and may engage with other stockholders or securityholders of the Company and other relevant parties, or take other actions concerning, the Company's business, lines of business, operations, strategy, previously announced restructuring, plans and prospects; any extraordinary corporate transactions (including, but not limited to, a merger, reorganization or liquidation); sales of a material amount of assets or divestitures; a change in the board of directors or management; a material change in the capitalization or dividend policies; other material changes in the Company's business, lines of business, or corporate structure; or similar actions.

Except as set forth herein, or as would occur upon completion of any of the matters discussed herein, the Reporting Persons have no present plans, proposals or intentions which would result in or relate to any of the transactions described in subparagraphs (a) through (j) of Item 4 of Schedule 13D. Although the foregoing reflects activities presently contemplated by the Reporting Persons and each other individuals named in Item 2 with respect to the Company, the foregoing is subject to change at any time.

**ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.**

(a)-(b) The information contained on the cover pages of this Schedule 13D is incorporated herein by reference.

The Reporting Persons beneficially own in the aggregate 13,902,877 shares of Common Stock, which represents approximately 27.8% of the outstanding shares of Common Stock. All calculations of percentage ownership in this Schedule 13D are based on 50,013,252 shares of Common Stock outstanding. This is composed of i) 42,474,011 shares of Common Stock outstanding as of August 14, 2023, as reported by the Issuer in its Form 6-K filed on August 15, 2023; ii) 3,014,354 shares issuable to the Reporting Persons upon the exercise of conversion instruments; and iii) 4,524,887 shares issuable to the Reporting Persons upon the conversion of the Subordinated Convertible Notes.

Each of the Funds directly holds the number and percentage of shares of Common Stock disclosed as beneficially owned by it in the applicable table set forth on the cover page to this Statement. Madryn, as the investment manager for each of the Funds, and the Advisors, as the general partners for each of the Funds, may be deemed to have the shared power to direct the voting and disposition of shares of Common Stock beneficially owned by the Funds and, consequently, Madryn and the Advisors may be deemed to possess indirect beneficial ownership of such shares. Madryn and the Advisors disclaim beneficial ownership of such shares for all other purposes.

The responses of the Reporting Persons to rows 7, 8, 9, 10, 11 and 13 on the cover pages of this Statement are incorporated herein by reference.

To the knowledge of the Reporting Persons, none of the Covered Persons directly owns any shares of Common Stock; provided, however, that because of each Covered Persons' status as a director, executive officer, manager, member or partner of a Reporting Person, a Covered Person may be deemed to be the beneficial owner of the shares of Common Stock beneficially owned by such Reporting Person. Except to the extent of their pecuniary interest, each of the Covered Persons disclaims beneficial ownership of the shares of the Common Stock reported herein and the filing of this Schedule 13D shall not be construed as an admission that any such Covered Person is the beneficial owner of any securities covered by this statement.

(c) Except as described herein, none of the Reporting Persons or, to their knowledge, none of the Covered Persons, has had any transactions in the Common Stock during the past 60 days.

(d) Except as set forth herein, to the knowledge of the Reporting Persons, no other person has the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, any shares of Common Stock.

(e) Not applicable.

**ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDINGS OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.**Resale Registration Rights Agreement

In connection with the Private Placement described in Item 3 hereto, MHP II and MHP II Cayman entered into a Resale Registration Rights Agreement, dated as of March 21, 2023, by and among the Company and the Purchasers named therein (the "Resale Registration Rights Agreement"). The Resale Registration Rights Agreement provides MHP II and MHP II Cayman with certain registration rights related to the shares acquired in connection with the Private Placement. The description of the Resale Registration Rights Agreement is qualified in its entirety by reference to the complete text of such agreement, a copy of which is filed as an exhibit hereto and is incorporated herein by reference.

Common Share Conversion Instrument

On July 14, 2022, MSO entered into a Common Share Conversion Instrument with the Company and the Administrative Agent named therein (the “MSO Conversion Instrument”). The MSO Conversion Instrument provides MSO with certain registration rights related to the shares issuable upon conversion of the loans under the Credit Facility. The description of the MSO Conversion Instrument is qualified in its entirety by reference to the complete text of such agreement, a copy of which is filed as an exhibit hereto and is incorporated herein by reference.

Fifth Amended and Restated Common Share Conversion Instruments

On August 1, 2023, MHP II and MHP II Cayman each entered into a Fifth Amended and Restated Common Share Conversion Instrument with the Company and the Administrative Agent named therein (the “Conversion Instruments”). The Conversion Instruments provide MHP II and MHP II Cayman, as applicable, with certain registration rights related to the shares issuable upon conversion of the loans under the Credit Facility. The description of the Conversion Instruments is qualified in its entirety by reference to the complete text of such agreements, copies of which are filed as exhibits hereto and are incorporated herein by reference.

Registration Rights Agreement

In connection with the Subordinated Convertible Notes described in Item 3 hereto, MHP II and MHP II Cayman entered into a Registration Rights Agreement, dated as of August 15, 2023, by and among the Company and the Purchasers named therein (the “Registration Rights Agreement”). The Registration Rights Agreement provides MHP II and MHP II Cayman with certain registration rights related to the shares issuable upon conversion of the Subordinated Convertible Notes. The description of the Registration Rights Agreement is qualified in its entirety by reference to the complete text of such agreement, a copy of which is filed as an exhibit hereto.

Pursuant to Rule 13d-1(k) promulgated under the Securities Exchange Act of 1934, as amended, the Reporting Persons have entered into an agreement with respect to the joint filing of this Schedule 13D, which agreement is set forth on the signature page to this Schedule 13D.

Except as described above and herein in this Schedule 13D, there are no other contracts, understandings or relationships (legal or otherwise) among the parties named in Item 2 hereto and between such persons and any person with respect to any of the common stock of the Company owned by the Funds.

**ITEM 7. MATERIAL TO BE FILED AS EXHIBITS.**

- |              |   |
|--------------|---|
| Exhibit 99.1 | Common Share Conversion Instrument, dated July 14, 2022, by and among the Company, Madryn Select Opportunities, LP and Madryn Health Partners II (Cayman Master), LP (Incorporated by reference to Exhibit 99.1 of Madryn’s Schedule 13D filed on April 3, 2023). |
| Exhibit 99.2 | Resale Registration Rights Agreement, dated March 21, 2023 (Incorporated by reference to Exhibit 99.3 of the Company’s Form 6-K filed on March 24, 2023).   |

- Exhibit 99.3 Fifth Amended and Restated Common Share Conversion Instrument, dated August 1, 2023, by and among the Company, Madryn Health Partners II, LP and Madryn Fund Administration, LLC.
- Exhibit 99.4 Fifth Amended and Restated Common Share Conversion Instrument, dated August 1, 2023, by and among the Company, Madryn Health Partners II (Cayman Master), LP and Madryn Fund Administration, LLC.
- Exhibit 99.5 Registration Rights Agreement, dated August 15, 2023, by and among the Company and the Purchasers named therein.



**SIGNATURES**

After reasonable inquiry and to the best of each of the undersigned's knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

In accordance with Rule 13d-1(k)(1)(iii) under the Securities Exchange Act of 1934, as amended, the persons named below agree to the joint filing on behalf of each of them of this Schedule 13D with respect to the common stock of the Company.

Dated: August 25, 2023

**Madryn Asset Management, LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Health Partners II, LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Health Partners II (Cayman Master), LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Health Advisors II, LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Health Advisors GP II, LLC**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Select Advisors, LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Select Advisors GP, LLC**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

**Madryn Select Opportunities, LP**

By: /s/ Matthew Girandola  
Name: Matthew Girandola  
Title: Chief Compliance Officer

NEITHER THE SECURITIES REPRESENTED HEREBY NOR THE COMMON SHARES ISSUABLE UPON CONVERSION HEREOF HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR QUALIFIED OR REGISTERED PURSUANT TO ANY U.S. STATE OR CANADIAN PROVINCIAL OR TERRITORIAL SECURITIES LAWS OR THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION. THE SECURITIES REPRESENTED HEREBY AND THE COMMON SHARES ISSUABLE UPON CONVERSION HEREOF MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT AND QUALIFIED OR REGISTERED PURSUANT TO APPLICABLE U.S. STATE, CANADIAN PROVINCIAL OR TERRITORIAL SECURITIES LAWS, AND/OR THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION, OR IF AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION REQUIREMENT IS AVAILABLE.

**GREENBROOK TMS INC.**

**FIFTH AMENDED AND RESTATED COMMON SHARE CONVERSION INSTRUMENT**

Amended and Restated: August 1, 2023

Date of Issuance: July 14, 2022

Series No. 2022-A

Certificate No. 1

THIS IS TO CERTIFY that Madryn Health Partners II, LP and its transferees, successors and assigns (the “Holder”) shall have the right (but not the obligation) to convert the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, into common shares, without par value (the “Common Shares”) in the capital of Greenbrook TMS Inc., a corporation incorporated under the laws of the Province of Ontario (the “Company”), at the initial conversion price of \$1.90 per Common Share (the “Conversion Price”), at any time after the date of issuance listed above (the “Commencement Date”) and expiring on the Expiration Date. This Fifth Amended and Restated Common Share Conversion Instrument (this “Instrument”) is issued subject to the Organization Documents of the Company and under and pursuant to that certain Credit Agreement, dated as of July 14, 2022, by and among the Company, the Holder, and the other parties thereto (as amended, modified or supplemented from time to time, the “Credit Agreement”). Capitalized terms used herein shall have the meanings ascribed to such terms in Section 13 hereof unless otherwise defined herein.

This Instrument amends, restates and replaces in its entirety that certain Fourth Amended and Restated Common Share Conversion Instrument dated as of March 27, 2023, issued by the Company to the Holder.

**SECTION 1. The Instrument: Transfer and Exchange.**

(a) The Instrument. This Instrument and the rights and privileges of the Holder hereunder may be exercised in whole or in part as provided herein and, as more fully set forth in Section 1(b) and Section 7 hereof, may, subject to applicable securities laws and the terms of this Instrument, be transferred by the Holder to any other Person or Persons who meet the requirements set forth herein at any time or from time to time, in whole or in part.

(b) Transfer and Exchanges. The Company shall initially record this Instrument in a register maintained by the Company for that purpose and subject to Section 7 hereof, from time to time thereafter shall reflect the transfer of this Instrument on such register when surrendered for transfer in accordance with the terms hereof and properly endorsed, accompanied by appropriate instructions, and further accompanied by payment in cash or by check, bank draft or money order payable to the order of the Company, in United States currency, of

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an amount equal to any stamp or other tax or governmental charge or fee required to be paid in connection with the transfer thereof. Upon any such transfer, a new conversion instrument or conversion instruments shall be issued to and in the name of the transferee and the Holder (in the event this Instrument is only partially transferred or in connection with any concurrent partial transfer and partial exercise) and the surrendered conversion instrument shall be canceled and the Company shall update the register accordingly. This Instrument may be exchanged at the option of the Holder, when surrendered at the Principal Office of the Company, for another conversion instrument or other conversion instruments of like tenor and representing in the aggregate the right to convert a like amount of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, into a like number of Common Shares at the Conversion Price (as such number may be adjusted upon adjustment of the Conversion Price as provided in [Section 5](#)).

## **SECTION 2. Exercise.**

(a) Right to Exercise. At any time after the Commencement Date and on or before the Expiration Date, the Holder, in accordance with applicable securities laws and the terms hereof, shall be entitled to exercise the conversion rights under this Instrument, in whole at any time or in part from time to time, by delivering this Instrument to the Company during normal business hours on any Business Day at the Company's Principal Office, together with the Notice of Conversion (with a copy to the Administrative Agent), in the form attached hereto as [Exhibit A](#) and made a part hereof (the "Notice of Conversion"), duly executed. The Holder shall not be required to deliver the original of this Instrument in order to effect an exercise hereunder. Subject to [Section 2\(c\)](#), the aggregate number of Conversion Shares to be subscribed for by the Holder pursuant to the applicable Notice of Conversion shall be equal to the amount calculated by dividing (i) the Aggregate Conversion Amount by (ii) the Conversion Price then in effect.

(b) Conversion of the Aggregate Conversion Amount. For any exercise, in whole or in part, of the conversion rights under this Instrument, payment of the Aggregate Conversion Amount shall be made to the Company by (i) automatically reducing the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement by an amount equal to the Aggregate Conversion Amount or (ii) a Net Exercise as provided in [Section 2\(c\)](#). Other than in the case of a Net Exercise in accordance with [Section 2\(c\)](#), simultaneously with the allotment and issuance of Conversion Shares, or the payment of the applicable Cash Settlement Amount, as the case may be, pursuant to [Section 2\(e\)](#), the Outstanding Amount of the Loans in an amount equal to the Aggregate Conversion Amount shall be deemed repaid under the Credit Agreement in accordance with Section 2.14 thereof. Following any exercise, in whole or in part, of the conversion rights under this Instrument, the Maximum Conversion Amount available for any subsequent exercise of the conversion rights under this Instrument shall be reduced by the Aggregate Conversion Amount paid by the Holder in connection with such exercise.

(c) Net Exercise. The Holder shall have the right to pay all or a portion of the Aggregate Conversion Amount by making a net exercise ("Net Exercise"), in which case the portion of the Aggregate Conversion Amount to be so paid shall be paid by reducing the number of Conversion Shares otherwise issuable pursuant to the Notice of Exercise by an amount equal to (i) the Aggregate Conversion Amount to be so paid, divided by (ii) the Fair Market Value Per Common Share. For the avoidance of doubt, in the case of a Net Exercise by the Holder, no amount of the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement shall be reduced or deemed repaid.

### (d) Cash Settlement.

(i) Notwithstanding any other provision of this Instrument, if, following the exercise of the conversion rights under this Instrument, (A) the applicable rules of the Toronto Stock Exchange ("TSX") or The Nasdaq Stock Market LLC ("Nasdaq") require approval by TSX or Nasdaq, as applicable, for any allotment or issuance of any number of Conversion Shares by the Company with respect to all or any portion of the Aggregate Conversion Amount, and the Company is unable to obtain such approval by using commercially reasonable efforts, (B) on or prior to the Share Delivery Date, the Company makes a written request to satisfy its obligations under this Instrument by means other than such allotment and

issuance of such number of Conversion Shares, and the Holder, in its sole and absolute discretion, accepts such request, or (C) the Company fails for any reason to allot and issue the applicable number of Conversion Shares with respect to all or any portion of the Aggregate Conversion Amount on or prior to the Share Delivery Date, and the Holder, in its sole and absolute discretion, elects to require the Company to satisfy its obligations under this Instrument by means other than such allotment and issuance of such applicable number of Conversion Shares (any such portion of the Aggregate Conversion Amount referred to in Section 2(d)(i)(A), (B) or (C), the “Non-Share Settled Portion”), then, in each case, the Company shall, in lieu of allotting and issuing to the Holder the applicable number of Conversion Shares with respect to the Non-Share Settled Portion, pay the applicable Cash Settlement Amount to the Holder for such Non-Share Settled Portion. Notwithstanding the foregoing, in the case of any Automatic Exercise pursuant to Section 2(i), the Company shall not be permitted to satisfy its obligations under this Instrument by means of payment of the applicable Cash Settlement Amount to the Holder, other than payment of the Cash Settlement Amount for the Non-Share Settled Portion referred to in Section 2(d)(i)(A).

(ii) The cash settlement amount (the “Cash Settlement Amount”) for any Non-Share Settled Portion shall be calculated as of the date of exercise of this Instrument and shall be equal to the product of (A) the Fair Market Value Per Common Share, multiplied by (B) the number of Conversion Shares which would, but for the occurrence of any event referred to in Section 2(d)(i)(A), (B) or (C), have been issuable to the Holder upon exercise of the conversion rights under this Instrument with respect to such Non-Share Settled Portion.

(iii) The Company shall be required to pay any Cash Settlement Amount to the Holder on or before the following applicable date (each, a “Cash Settlement Date”): (A) if such payment is required under Section 2(d)(i)(A), the Share Delivery Date; (B) if such payment is required under Section 2(d)(i)(B), the fifth (5<sup>th</sup>) Business Day following the date of the Holder’s acceptance of the written request of the Company referred to in Section 2(d)(i)(B); or (C) if such payment is required under Section 2(d)(i)(C), the third (3<sup>rd</sup>) Business Day following the date of the Holder’s election referred to Section 2(d)(i)(C). Notwithstanding the foregoing, the Cash Settlement Date (other than the Cash Settlement Date in connection with any Cash Settlement Amount to be paid upon any Automatic Exercise) shall be extended by up to five (5) Business Days in the event the Company is required to adjust the Conversion Price in accordance with Section 5.

(iv) The Company covenants and agrees that, after the date of issuance set forth above, it shall not, without the prior written consent of the Holder, enter into or agree to become subject to specific or direct contractual term, condition, provision or agreement that would specifically prohibit the performance of the Company’s obligations to pay the applicable Cash Settlement Amount under this Section 2(d).

(e) Issuance of Conversion Shares or Payment of Cash Settlement Amount Upon Exercise. Upon (x) receipt by the Company of a Notice of Conversion at its Principal Office in proper form for exercise or (y) any Net Exercise as provided in Section 2(e) or any Automatic Exercise as provided in Section 2(i), the Company shall:

(i) allot and issue to the Holder, without delay and in any case on or prior to the Share Delivery Date, the number of Conversion Shares specified in the Notice of Conversion as set forth in Exhibit B hereto; or

(ii) if applicable, pay to the Holder the applicable Cash Settlement Amount in accordance with Section 2(d),

and, in each case, simultaneously deliver to the Holder, without duplication, all Distributed Property that the Holder is entitled to receive pursuant to Section 5(a)(ii).

(f) Fractional Shares. If any fraction of a Conversion Share would be deliverable upon an exercise of this Instrument, the Company may, in lieu of delivering such fraction of a Conversion Share, make a cash payment to the Holder in an amount equal to the same fraction of the Fair Market Value Per Common Share determined as of the date of exercise of this Instrument.

(g) Partial Exercise. In the event that the Holder exercises this Instrument in part from time to time, there shall be no restriction on the number of times the Holder may exercise its conversion rights under this Instrument to subscribe for Conversion Shares or the minimum number of Conversion Shares that the Holder shall be required to subscribe for upon any partial exercise of its conversion rights under this Instrument. Upon any partial exercise of this Instrument, the Company shall issue and deliver to the Holder a new conversion instrument in like form for the unexercised portion thereof which has not expired.

(h) Common Shares. The Common Shares issued pursuant to this Instrument shall:

(i) rank equally in all respects from the effective date of issue with the Common Shares then in issue (if any);

(ii) be entitled to all dividends and distributions declared or paid on any date or by reference to any date on or after the date on which the relevant Notice of Conversion is delivered to the Principal Office (or at such other address as the Company may designate by notice in writing to the Holder in accordance with the terms hereof); and

(iii) otherwise have the rights and privileges under applicable law and as prescribed in the Organization Documents of the Company from time to time.

(i) Automatic Exercise. Unless the Holder has expressly notified the Company in writing at least five (5) Business Days prior to the Expiration Date that such Holder either (a) elects not to exercise the conversion rights under this Instrument and that such Holder will instead let this Instrument expire on the Expiration Date or (b) will exercise the conversion rights under this Instrument on or prior to the Expiration Date by a method other than as set forth in this Section 2(i), if the Fair Market Value Per Common Share determined as of the Expiration Date is greater than the Conversion Price then in effect, the Holder shall be deemed, without further act by the Holder (and, for avoidance of doubt, without any delivery of this Instrument or the Notice of Conversion to the Company), for all purposes of this Instrument, to have automatically exercised in full, by a Net Exercise in accordance with Section 2(c), its conversion rights under this Instrument on the Expiration Date (an "Automatic Exercise"). If the Expiration Date is expected to occur pursuant to clause (b) of the definition thereof, the Company shall deliver the Holder a written notice of such expected occurrence of such Expiration Date at least ten (10) Business Days prior to such expected occurrence of such Expiration Date with the view to allowing the Holder sufficient time to opt out of any Automatic Exercise on such expected Expiration Date.

(j) Company's Failure to Timely Deliver Securities or Pay Cash Settlement Amount.

(i) The Company understands that a delay in the delivery of the Conversion Shares after the Share Delivery Date or payment of the Cash Settlement Amount after the applicable Cash Settlement Date could result in economic loss to the Holder. As compensation to the Holder for such loss, if the Company fails to (A) cause the Transfer Agent to transmit to the Holder the Conversion Shares on or before the Share Delivery Date in accordance with the provisions of Exhibit B pursuant to an exercise of the conversion rights under this Instrument (other than a failure caused by incorrect or incomplete information provided by the Holder to the Company) or (B) pay the Cash Settlement Amount to the Holder on or before the applicable Cash Settlement Date, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder for late issuance of the Conversion Shares the proportionate amount of \$100 per Trading Day (increasing to \$200 per Trading Day after the tenth (10<sup>th</sup>) Trading Day) after the Share Delivery Date or the applicable Cash Settlement Date, as applicable, for each \$10,000 of Aggregate Conversion Amount for which the conversion rights under this Instrument is exercised which are not

timely delivered or paid, respectively. Notwithstanding anything to the contrary contained in this Instrument, the Company shall not be required to pay any amounts under this Section 2(j) during the first five (5) Trading Days of any late issuance or delivery of Conversion Shares or Cash Settlement Amounts, as applicable, in connection with an Automatic Exercise.

(ii) Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon exercise of the conversion rights under this Instrument. The Company shall pay any payments incurred under this Section 2(j) in immediately available funds upon demand.

(k) Securities Law Legend(s). The Holder agrees and acknowledges, by receipt of this Instrument, that this Instrument, and any Conversion Shares issuable upon conversion hereof, shall bear a securities law legend substantially similar to the legend on the facing page of this Instrument, to the extent required by applicable securities laws. The Company acknowledges and agrees that Conversion Shares issuable upon exercise of the conversion rights under this Instrument shall not be required to contain any legend while a registration statement (including the Registration Statement) covering the resale of such Conversion Shares is effective under the Securities Act.

(l) Administrative Agent's Acknowledgement. The Administrative Agent acknowledges the terms of this Instrument and agrees that, upon exercise of the conversion rights under this Instrument, the Administrative Agent shall perform its duties and exercise its rights and powers under the Credit Agreement, including, without limitation, in accordance with the terms of Section 2.14 thereof, to give effect to any corresponding deemed repayment of the Outstanding Amount of Loans under the Credit Agreement in an amount equal to the Aggregate Conversion Amount.

**SECTION 3. Payment of Taxes.** The Company shall promptly pay any and all stamp, documentary, registration or similar tax or taxes in connection with the entry into, performance, enforcement or admissibility in evidence of this Instrument or attributable to the initial issuance of Conversion Shares or other securities issuable upon the exercise of the conversion rights under this Instrument or issuable pursuant to Section 5 hereof, excluding any tax or taxes which may be payable because of the transfer involved in the issuance or delivery of any certificates for Conversion Shares or other securities in a name other than that of the Holder in respect of which such Conversion Shares or securities are issued. Any and all payments by or on account of any obligation of the Company hereunder (whether paid in cash or otherwise) shall be made free and clear of and without deduction or withholding for any taxes except as required by applicable law; provided that, if the Company is required to deduct or withhold any taxes hereunder then (a) the amount payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional amounts payable under this Section 3), the Holder receives an amount (in cash or otherwise) equal to the amount it would have received had no such deduction or withholding been made; provided, that no gross-up shall be required in respect of Day 1 U.S. Federal Withholding Taxes, (b) the Company shall make such required deduction or withholding, and (c) the Company shall pay to the relevant taxation authority the full amount deducted or withheld in accordance with, and within the time limits prescribed by, applicable law. The Company shall provide the Holder with copies of receipts or other communications relating to the remittance of such withheld amount or the filing of such forms received from such taxation authority promptly after receipt thereof. The Company shall indemnify the Holder, within ten (10) days after written demand therefor, for the full amount of any taxes (other than taxes computed by reference to net income of the Holder) paid or payable by the Holder, on or with respect to any payment (whether paid in cash or otherwise) by or on account of any obligation of the Company hereunder (including taxes (other than taxes computed by reference to net income of the Holder) imposed or asserted on or attributable to amounts payable under this Section 3) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant taxation authority.

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**SECTION 4. Replacement Instrument.** In case this Instrument is mutilated, lost, stolen or destroyed, the Company shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated Instrument, or in lieu of and in substitution for the Instrument lost, stolen or destroyed, a new Instrument of like tenor and representing an equivalent right or interest, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of such Instrument and upon receipt of indemnity reasonably satisfactory to the Company; provided, that if the Holder is a financial institution, business development company or other institutional or fund investor, its own agreement shall be satisfactory.

**SECTION 5. Adjustments to the Conversion Price.**

Under certain conditions, the Conversion Price is subject to adjustment as set forth in this Section 5.

(a) Adjustments. The Conversion Price, after taking into consideration any prior adjustments pursuant to this Section 5, shall be subject to adjustment from time to time as follows and, thereafter, as adjusted, shall be deemed to be the then applicable Conversion Price hereunder, subject to further adjustment.

(i) Common Share Distributions, Subdivisions and Combinations. In case at any time or from time to time the Company shall:

(A) issue to the holders of its Common Shares a dividend payable in, or other distribution of, Common Shares, bonus shares or other Equity Interests of the Company (a "Share Distribution"),

(B) subdivide its issued Common Shares into a larger number of Common Shares, including without limitation, by means of a stock split (a "Share Subdivision"), or

(C) combine its issued Common Shares into a smaller number of Common Shares (a "Share Combination"),

then the Conversion Price shall be (x) proportionately decreased in the case of a Share Distribution or a Share Subdivision and (y) proportionately increased in the case of a Share Combination. In the event the Company shall declare or pay, without consideration, any dividend on the Common Shares payable in any right to acquire Common Shares for no consideration, then the Company shall be deemed to have made a Share Distribution in an amount of Common Shares equal to the maximum number of Common Shares issuable upon exercise of such rights to acquire Common Shares. Any adjustment under this Section 5(a) shall become effective at the close of business on the date the Share Subdivision or Share Combination becomes effective, or upon the making of any Share Distribution.

(ii) Distributions. If the Company, at any time while this Instrument is outstanding, distributes to all holders of Common Shares for no consideration (A) evidence of its indebtedness, (B) any security (other than a Share Distribution), (C) rights or warrants to subscribe for or purchase any security (other than any deemed Share Distribution referred to in Section 5(a)(i)), or (D) any other asset, including cash or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction (in each case, "Distributed Property"), then, upon any exercise of the conversion rights under this Instrument that occurs after the record date fixed for determination of shareholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Conversion Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Conversion Shares had the Holder been the record holder of such Conversion Shares in respect of the then-unexercised portion of this Instrument immediately prior to such record date without regard to any limitation on exercise contained therein.



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(b) Fundamental Transactions. If, at any time while this Instrument is outstanding, the Company effects a Fundamental Transaction, then, to the extent then permitted under applicable laws, rules and regulations (including the rules of the Principal Market (or such other national securities exchange on which the Common Shares are then listed and traded), upon any subsequent exercise of the conversion rights under this Instrument, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash, assets or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Conversion Shares then issuable upon exercise in full of the conversion rights under this Instrument without regard to any limitations on exercise contained herein, subject to adjustments from and after the consummation date as nearly equivalent as possible to the adjustments provided for in this Section 5 (the "Alternate Consideration"). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company or surviving entity shall have (i) assumed, by written instrument delivered to the Holder, the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Instrument, and (ii) delivered to the Holder an opinion of counsel for such corporation or entity, satisfactory to the Holder, which opinion shall state that all of the terms of this Instrument applicable in respect of such Alternative Consideration shall be enforceable against the Company and such successor or surviving entity in accordance with the terms hereof and thereof, together with such other matters as the Holder may reasonably request. In any such case, appropriate provisions shall be made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to such Alternate Consideration deliverable upon exercise of the conversion rights hereunder, and appropriate equitable adjustments shall be made to the Conversion Price payable hereunder; provided that the Maximum Conversion Amount shall remain the same (and, for the avoidance of doubt, this Instrument shall be exclusively exercisable for such Alternate Consideration from and after the consummation of such Fundamental Transaction). The provisions of this Section 5(b) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(c) Notices.

(i) Notice of Proposed Actions. The Company shall give to the Holder advance written notice of any proposed action by the Company or any of its Subsidiaries pursuant to which an adjustment to the Conversion Price may occur pursuant to this Section 5 as promptly as practicable and in any event within five (5) Business Days after the approval of such action or entry into any agreement to give effect to such action, which written notice shall specify the proposed date on which a record is to be taken for the purposes of any Share Distribution or distribution of any Distributed Property, or the proposed date on which any reclassification, reorganization, consolidation, merger, stock exchange, sale, transfer, disposition, liquidation, dissolution, winding up, Fundamental Transaction or other transaction is to take place and the date of participation therein by the holders of Common Shares of the Company, if any such date is to be fixed, or the proposed date on which the transfer of Common Shares is to occur, and shall also set forth such facts with respect thereto as shall be necessary to indicate the effect of such action on the Common Shares and on the Conversion Price after giving effect to any adjustment which will be required as a result of such action.

(ii) Adjustment Notice. Whenever the Conversion Price is to be adjusted pursuant to this Section 5, unless otherwise agreed by the Holder, the Company shall promptly (and in any event within five (5) Business Days after the event requiring the adjustment) prepare and deliver to the Holder a certificate signed by the chief financial officer of the Company, setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment is to be calculated. The certificate shall set forth, if applicable, a description of the basis on which the Board in good faith determined, as applicable, the equitable nature of any adjustment under Section 5(b) hereof and the new Conversion Price, as applicable.

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**SECTION 6. No Dilution or Impairment.** The Company will not, by amendment of its Organization Documents or through any reorganization, recapitalization, transfer of assets, consolidation, merger, share exchange, dissolution or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Instrument, including, without limitation, the adjustments required under Section 5 hereof, if any, and will at all times in good faith assist in the carrying out of all such terms and in taking of all such action as may be necessary or appropriate to protect the rights of the Holder against dilution or other impairment, subject to compliance with applicable securities laws and stock exchange rules and regulations. Without limiting the generality of the foregoing and notwithstanding any other provision of this Instrument to the contrary (including by way of implication), the Company will take all such action as may be necessary or appropriate so that the Company may validly and legally issue Conversion Shares to the Holder upon the exercise of the conversion rights under this Instrument.

**SECTION 7. Transfers of this Instrument.**

(a) Generally. Subject to the restrictions set forth in this Section 7, the Holder may, at any time and from time to time, assign or transfer this Instrument and the Conversion Shares, in each case in whole or in part, without the prior written consent of the Company. The transferor shall be deemed to remain the holder of this Instrument until the name of the transferee is entered in the Company register in respect of this Instrument. This Instrument has not been, and the Conversion Shares at the time of their issuance may not be, registered under the Securities Act or qualified or registered under any applicable Canadian securities laws. Accordingly, the Company's obligation to issue Conversion Shares upon exercise of this Instrument by any such transferee shall be subject to compliance with applicable securities laws, and the Company reserves the right to obtain such information from the transferee as it may reasonably request to confirm the applicability of an available exemption from registration or qualification under applicable securities laws, including, without limitation, confirmation of representations and warranties substantially similar to those set forth in Section 12. This Instrument and the Conversion Shares are issued or issuable subject to the provisions and conditions contained herein and in the Credit Agreement and to the provisions and conditions contained in the Organization Documents of the Company, and the Holder by accepting the same agrees with the Company to such provisions and conditions, and represents to the Company that this Instrument has been acquired and the Conversion Shares will be acquired for the account of the Holder for investment and not with a view to or for sale in connection with any distribution thereof.

(b) Compliance with Securities Laws. The Holder agrees that this Instrument and the Conversion Shares may not be sold or otherwise disposed of except pursuant to (i) an effective registration statement under the Securities Act covering the re-sale by the Holder of the Conversion Shares, and applicable U.S. state securities laws or pursuant to an applicable exemption from the registration requirements of the Securities Act and such U.S. state securities laws, and (ii) a prospectus filed under applicable Canadian securities laws covering the sale by the Holder of the Conversion Shares or pursuant to an applicable exemption from such Canadian securities law requirements.

(c) No Transfer to Non-Lenders. The Holder agrees that this Instrument may not be assigned, transferred or sold to any Person who is not a Lender under the Credit Agreement.

**SECTION 8. Confidentiality.** The Holder hereby agrees to comply with and be bound by, and agrees to require a transferee permitted hereby to be bound by, the confidentiality provisions in Section 11.07 of the Credit Agreement and acknowledges and agrees that (a) any information provided to the Holder or its representatives pursuant to this Instrument, (b) any other information provided to the Holder or its representatives that a reasonable person would deem to be confidential under the circumstances, and (c) any other information provided to the Holder or its representatives pursuant to this Instrument and is clearly identified at the time of delivery as confidential shall, in each case, be deemed Information (as defined in the Credit Agreement) and subject to the confidentiality provisions in Section 11.07 of the Credit Agreement.

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**SECTION 9. Covenants.** The Company hereby covenants and undertakes to the Holder that for so long as the Holder holds this Instrument, any interest created under this Instrument or any Conversion Shares:

(a) **Validly Issued Shares.** All Conversion Shares issuable upon exercise of the conversion rights under this Instrument and full conversion of the Aggregate Conversion Amount (including those issued pursuant to adjustments as required pursuant to Section 5 hereof) shall, upon delivery by the Company, be duly authorized and validly issued, fully paid and nonassessable, free from all stamp taxes, liens and charges with respect to the issue or delivery thereof and otherwise free of all other security interests, encumbrances and claims (other than security interests, encumbrances and claims to which the Holder is subject prior to or upon the issuance of the applicable Conversion Shares or pursuant to the Credit Agreement, restrictions under applicable federal, provincial, territorial and/or state securities laws and other transfer restrictions described herein).

(b) **Reservation of Shares.** The Company shall at all times reserve and keep available for issue out of the aggregate of its authorized but unissued share capital, free of preemptive rights, such number of its duly authorized Common Shares as shall be required to enable the Company to issue Conversion Shares in the full amount required upon exercise in full of the conversion rights under this Instrument. If any Common Shares reserved or to be reserved for the purpose of the exercise of the conversion rights under this Instrument, or any shares or other securities reserved or to be reserved for the purpose of issuance pursuant to Section 5 hereof, require registration with or approval of any Governmental Authority under any federal or state law (other than securities laws) before such shares or other securities may be validly delivered upon exercise of the conversion rights under this Instrument, then the Company covenants that it will, at its sole expense, promptly secure such registration or approval, as the case may be (including, but not limited to, approvals or expirations of waiting periods required under the Hart Scott Rodino Antitrust Improvements Act).

(c) **No Effect Upon Lending Relationship.** Notwithstanding anything herein to the contrary, nothing contained in this Instrument shall affect, limit or impair the rights and remedies of the Holder or any of its Affiliates in its capacity as a lender to the Company pursuant to any agreement under which the Company has borrowed money from the Holder or any of its Affiliates. Without limiting the generality of the foregoing, the Holder, for itself or in any capacity with respect to any of its Affiliates in exercising its or its Affiliates' respective rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect equity holder of the Company, (ii) the equity of the Company or (iii) any duty it may have to any other direct or indirect equity holder of the Company, except as may be required under the Credit Agreement or by commercial law applicable to creditors generally, or as may be required under applicable securities laws.

(d) **Compliance with Rule 144.** The Company shall timely file (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 of issuance set forth above pursuant to the Exchange Act. As long as the Holder owns any Conversion Securities, if the Company is not required to file reports pursuant to such securities laws, it will prepare and furnish to the Holder and make publicly available in accordance with Rule 144 such information as is required for the Holder to sell Conversion Securities under Rule 144. For so long as the Conversion Shares are not registered under an effective registration statement, the Company further covenants that it will take such further action as the Holder may reasonably request and cooperate in all respects with the Holder, including using its best efforts to provide instructions to the Transfer Agent in order to facilitate a sale or transfer of Conversion Shares, cause its legal counsel to issue a legal opinion to the Transfer Agent for such Conversion Shares if required by the Transfer Agent to effect the removal of the legend hereunder or procure the removal of any restrictive legend applicable to the Conversion Shares, all to the extent required from time to time to enable the Holder to sell such Conversion Shares without registration under the Securities Act in accordance with the requirements of the applicable exemptions provided by Rule 144, if available.

(e) **Certain Amendments.** The Company shall not adopt any amendment or modification of the Organization Documents of the Company that would adversely affect the Holder (in its capacity solely as a holder of this Instrument) without prior written consent of the Holder.

(f) Limitation on Certain Restrictions. The Company shall not, and will not permit or cause any of its Subsidiaries, directly or indirectly, to create or otherwise cause or suffer to exist or become effective any restriction or encumbrance (other than the Credit Agreement) on the ability of the Company and any such Subsidiaries to perform and comply with their respective obligations under this Instrument.

(g) Regulatory Requirements and Restrictions. In the event of any reasonable determination by the Holder that, by reason of any existing or future national, federal or state law, statute, rule, regulation, guideline, order, court or administrative ruling, request or directive (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) including bank holding company related laws (collectively, a “Regulatory Requirement”), the Holder is effectively restricted or prohibited from holding this Instrument or the Conversion Shares (including any shares of capital stock or other securities distributable to the Holder in any merger, reorganization, readjustment or other reclassification), or otherwise realizing upon or receiving the benefits intended under this Instrument, the Company shall, and shall use its reasonable best efforts to take such action as the Holder and the Company shall jointly agree in good faith to be necessary to permit the Holder to comply with such Regulatory Requirement; provided, that, no action shall be required to be taken by the Company that would (i) require the Company or any of its Subsidiaries to change its line of business or effect any transactions involving the Company or any of its Subsidiaries (including, but not limited to, any corporate reorganization); (ii) materially interfere or would reasonably be expected to materially interfere with any financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company; (iii) require the Company to obtain shareholder approval; (iv) require the Company or any of its Subsidiaries to re-incorporate under the laws of any other jurisdiction or to register pursuant to the rules or regulations of any regulatory agency; or (v) result in any adverse tax consequences to the Company or any of its Subsidiaries. The reasonable costs of taking such action, whether by the Company, any of its Subsidiaries, the Holder or otherwise, shall be borne in full by the Holder.

#### **SECTION 10. Registration Rights.**

(a) As soon as reasonably possible, but in any event, no later than twelve (12) calendar months following the Commencement Date (and subject to satisfaction of the Registration Conditions), the Company shall prepare and file a shelf registration statement with the Commission to permit the public resale of the Registrable Securities (the “Registration Statement”). The Registration Statement required to be filed with the Commission pursuant to this Section 10(a) shall be on Form F-3 or Form F-10, or, if neither Form F-3 nor Form F-10 is then available to the Company, on Form F-1, Form S-3, Form S-1 or such other form of registration statement as is then available to effect a registration for resale of the Registrable Securities, covering the Registrable Securities, and shall contain a prospectus in such form as to permit any the Holder to sell the Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect, or in the case of Form F-10, any similar provision under Canadian securities laws) at any time beginning on the effective date for such Registration Statement. The Company shall use its best efforts to cause a Registration Statement filed pursuant to this Section 10(a) to be declared effective by the Commission as soon as possible, but in any event, within one hundred twenty (120) calendar days after the filing of the Registration Statement. A Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the Holder, including by way of an underwritten offering, if so elected by the Holder, subject to a minimum offering size of \$3,000,000. During the Effectiveness Period, the Company shall use its best efforts to cause a Registration Statement filed pursuant to this Section 10(a) to remain effective, and to be supplemented and amended to the extent necessary to ensure that such Registration Statement is available or, if not available, that another registration statement is available for the resale of the Registrable Securities until the Registration Termination Time. The Company shall prepare and file a listing application with the Principal Market for the Company’s Common Shares (including Nasdaq and TSX, if applicable, or such other national securities exchange on which the Company’s Common Shares are then listed and traded, in each case, to the extent required by the rules and regulations of such exchange) to list all Conversion Shares issuable upon exercise of the conversion rights under this Instrument covered by a Registration Statement and shall have such Conversion Shares issuable upon exercise of the conversion rights under this Instrument promptly approved for listing on such Principal Market (including Nasdaq and TSX, if applicable, or such other national securities

exchange on which the Common Shares are then listed and traded, in each case, to the extent required by the rules and regulations of such exchange) by the effective date of such Registration Statement, subject only to official notice of issuance. Within two (2) Business Days of the effective date of a Registration Statement, the Company shall notify the Holder of the effectiveness of such Registration Statement.

(b) When effective, a Registration Statement (including the documents incorporated therein by reference) shall comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in such Registration Statement, in the light of the circumstances under which a statement is made).

(c) Without limiting Section 10(a), the Company agrees that it shall notify the Holder in writing at least five (5) Business Days prior to the filing of any registration statement under the Securities Act for purposes of a proposed public offering of Common Shares (including, without limitation, registration statements relating to secondary offerings of securities of the Company, but excluding (i) any registration statement relating to any employee benefit plan; (ii) with respect to any corporate reorganization or transaction under Rule 145 promulgated under the Securities Act, any registration statement related solely to the issuance or resale of securities issued in such a transaction; (iii) any registration statement related solely to Common Shares issued upon conversion of convertible debt securities; (iv) any registration statement filed under Rule 462(b) promulgated under the Securities Act; or (v) any registration statement on Form S-4, Form F-4 or Form S-8 not contemplated by clauses (i) through (iv) hereof) that would be filed at any time during which this Instrument is still outstanding and the Holder (together with the Holder's Affiliates who are holders of the other conversion instruments forming the same series with this Instrument) continues to hold or beneficially own Registrable Securities that comprise at least one percent (1%) of the Common Shares then outstanding, and the Company will afford the Holder an opportunity to include in such registration statement all or part of the Registrable Securities, subject to the provisions hereof (such registration statement, the "Piggyback Registration Statement"). If the Holder desires to include in any such Piggyback Registration Statement all or any part of the Registrable Securities held by it, the Holder shall, within three (3) Business Days after the above-described notice from the Company, so notify the Company in writing and shall thereafter furnish the Company with such information as the Company reasonably requires to include such Registrable Securities in such offering; provided that, if such Registrable Securities represent Conversion Shares that have not yet been issued upon exercise of this Instrument, then the Holder shall also include a Notice of Conversion in respect of such Registrable Securities, it being understood that in no event shall the Company be obligated to include in any such Piggyback Registration Statement any Conversion Shares that have not been, or will not be, actually issued prior to the closing of the applicable offering due solely to the Holder's failure to timely deliver such Notice of Conversion to the Company. The Company will use its commercially reasonable efforts to cause such Registrable Securities as to which inclusion shall have been so requested to be included in the Piggyback Registration Statement, subject to the second proviso in the next sentence. The Holder shall be entitled to sell the Registrable Securities included in a Piggyback Registration Statement in accordance with the method of distribution contemplated in the Piggyback Registration Statement; provided that, if the Piggyback Registration Statement relates to an underwritten offering, then (A) the Company shall be entitled to select the underwriters in its sole discretion and (B) the Holder must sell all Registrable Securities included on the Piggyback Registration Statement in such underwritten offering pursuant to an underwriting agreement containing terms and conditions that are customary for secondary offerings; and provided, further, that if the number of Registrable Securities requested by the Holder, together with the number of Common Shares that other persons that have duly requested to be included in such Piggyback Registration Statement pursuant to "piggyback rights" evidenced by another agreement (including, without limitation, the Existing Registration Rights Agreement) (collectively, "Requested Shares"), exceeds the maximum number of securities that may be sold in the applicable offering under such Piggyback Registration Statement without adversely affecting the success of such offering, as advised by the managing underwriters for such offering, then the number of Requested Shares to be included in such Piggyback Registration Statement will be allocated first, to such other persons party to the Existing Registration Rights Agreement; second, to the Holder; and third, to any other such persons. The Company may withdraw a Piggyback Registration Statement prior to its being declared effective without incurring any liability to the Holder and shall not be required to keep a Piggyback Registration Statement effective for longer than the period contemplated by the intended manner of distribution for the securities of the Company to be sold by the Company as described in the prospectus included in the Piggyback Registration Statement.

(d) For the avoidance of doubt, the rights to cause the Company to register Registrable Securities granted to the Holder by the Company under this Section 10 shall be fully assignable and transferrable to the same extent as this Instrument and the Conversion Shares are assignable and transferrable pursuant to Section 7 hereof, and any assignee or transferee of any Conversion Securities shall have all of the rights of the Holder to cause the Company to register Registrable Securities as set forth in this Section 10.

(e) The Holder (or any assignee or transferee) shall cooperate with the Company by, with reasonable promptness, supplying information and executing documents relating to such Holder (or transferee or assignee) or the securities of the Company owned by such Holder (or transferee or assignee) in connection with such registration under this Section 10 which are customary for offerings of this type or are required by applicable laws or regulations, including, but not limited to, furnishing to the Company a completed questionnaire in the form attached to this Instrument as Exhibit C. In the event the Holder does not comply with the immediately preceding sentence within a reasonable time prior to the initial filing in connection with such registration, the Company shall be permitted to exclude the Holder as a selling securityholder in connection therewith. In addition, the right of the Holder to include any of its Registrable Securities in any underwritten offering pursuant to a Piggyback Registration Statement will be subject to the execution and delivery by such Holder or its duly authorized representative or attorney-in-fact, of any related underwriting agreement and such other agreements or instruments (including customary "lock-up" agreements, custody agreements and powers of attorney), if any, as may be reasonably requested (to the same extent any such request is also made to the Company's directors or officers and/or other selling shareholders in such offering) by the managing underwriters for such offering.

(f) Notwithstanding the foregoing provisions of this Section 10, the Company may, at any time, (i) delay the filing or delay or suspend the effectiveness of a Registration Statement, Piggyback Registration Statement or any pending or potential offering thereunder; (ii) without suspending such effectiveness, instruct the Holder not to sell any securities included in a Registration Statement or Piggyback Registration Statement; or (iii) delay the filing of any amendment or supplement to any Registration Statement or Piggyback Registration Statement, if, in the case of any of clause (i), (ii) or (iii), the Board has determined and promptly delivers a notice (a "Suspension Notice") to the Holder in writing that in its reasonable good faith judgment (A) a material event has occurred or is likely to occur with respect to the Company that has not been publicly disclosed and, if disclosed, could reasonably be expected to materially and adversely affect the Company and its ability to consummate the registration of the resale of the Registrable Securities or (B) such registration could reasonably be expected to materially interfere with any material financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company (a "Suspension Period"), by providing the Holder with written notice of such Suspension Period and the reasons therefor. The Company will use its reasonable best efforts to provide such Suspension Notice at least ten (10) Business Days prior to the commencement of such a Suspension Period; provided, however, that in any event the Company will provide such notice no later than the commencement of such Suspension Period; provided, further, that in no event will a Suspension Period exceed thirty (30) days and in no event shall the total number of days subject to a Suspension Period during any consecutive twelve (12) month period exceed forty-five (45) days. Any Suspension Period will not be deemed to have ended until the Holder has received a notice from the Company stating that such Suspension Period has ended. The Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a Suspension Notice from the Company, such Holder will forthwith discontinue any offers and sales of such Registrable Securities under a Registration Statement or a Piggyback Registration Statement until such Holder's receipt of the copies of the applicable supplemented prospectus and/or amended registration statement or until it is advised in writing by the Company that the use of the prospectus under the applicable Registration Statement or Piggyback Registration Statement, as applicable, may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such prospectus or amended registration statement. The Company and the Holder acknowledge and agree that in no way shall this Section 10(f) limit the Holder's ability to sell securities without using a Registration Statement or a Piggyback Registration Statement.

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(g) The Company shall pay all reasonable Registration Expenses.

**SECTION 11. Representations and Warranties of the Company.** The Company hereby represents and warrants to the Holder as of the Commencement Date, that:

(a) The Company (i) is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, (ii) has the requisite power and authority to execute, deliver and perform its obligations under this Instrument, and (iii) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license.

(b) The Board has been generally and unconditionally authorized and empowered to execute this Instrument, and allot and issue the Conversion Shares in accordance with the Organization Documents of the Company and the terms of this Instrument, and that execution, delivery and performance by the Company of this Instrument has been duly authorized by all necessary corporate or other organizational action, and does not (i) contravene the terms of any of the Organization Documents of the Company or any Subsidiary, or (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (as defined in the Credit Agreement) under, or require any payment to be made under (A) any Contractual Obligation (as defined in the Credit Agreement) to which the Company or any of its Subsidiaries is a party or affecting such Person or the properties of the Company or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Company or any of its Subsidiaries or their property is subject.

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company of this Instrument other than those that have already been obtained and are in full force and effect. No shareholder or equityholder approvals are required under the Organization Documents of the Company or any of its Subsidiaries, any instrument or agreement to which the Company or any of its Subsidiaries is a party, or under the rules of the Principal Market on which the Common Shares are traded (including Nasdaq and TSX, if applicable) in connection with the issuance of this Instrument or the Conversion Shares issuable upon exercise of the conversion rights under this Instrument.

(d) Neither the Company nor any of its Subsidiaries is insolvent or bankrupt or unable to pay its debts as they fall due and neither the Company nor any of its Subsidiaries has stopped or suspended payment of its debts or indicated its intention to do so, nor has any analogous procedure or step been taken or proposed in any jurisdiction in relation to the Company or any of its Subsidiaries, nor has the Company or any of its Subsidiaries commenced negotiations with one or more of its creditors with a view to rescheduling or restructuring any of its indebtedness. No steps have been taken or proposed for the winding-up, bankruptcy, administration, examinership, insolvency, dissolution or reorganization of the Company or any of its Subsidiaries.

(e) This Instrument has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally; (ii) general principles of equity, regardless of whether considered in a proceeding in equity or at law; and (iii) public policy considerations.

(f) The Conversion Shares have been duly and validly authorized and reserved for issuance by the Company and, when issued upon exercise of the conversion rights under this Instrument in accordance with its terms, will be fully paid and nonassessable, and the issuance of the Conversion Shares, if any, will not be subject to any statutory or contractual preemptive right, right of first refusal or other similar rights; the Conversion Shares when issued and delivered against payment therefor as provided for in this Instrument will be free of any restriction upon the voting or transfer thereof pursuant to the Company' s Organization Documents or any agreement or other instrument to which the Company or any of its Subsidiaries is a party other than the restrictions on ownership and transfer set forth in the Company' s Organization Documents, if any, and applicable securities laws.

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(g) The Conversion Shares issuable upon exercise of the conversion rights under this Instrument will conform, in all material respects to the descriptions thereof contained in the reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act, the Exchange Act and applicable Canadian securities laws (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “Public Filings”) and the Organization Documents of the Company. Except as disclosed in the Public Filings, there are no persons with registration or other similar rights to have any equity or debt securities, including securities which are convertible into or exchangeable for equity securities, registered pursuant to any registration statement or otherwise registered by the Company or any of its Subsidiaries under the Securities Act or applicable Canadian securities laws, all of which registration or similar rights are fairly summarized in the Public Filings.

(h) Assuming the accuracy of the representations made by the Holder herein as of the Commencement Date and as of the date of any exercise of such Holder’s conversion rights under this Instrument, as applicable, the offer and sale by the Company of this Instrument to the Holder and the Conversion Shares issuable upon exercise by the Holder of the conversion rights under this Instrument are not required to be registered pursuant to the provisions of Section 5 of the Securities Act, and the first trade in the Conversion Shares issuable upon exercise by the Holder of the conversion rights under this Instrument is exempt from the prospectus requirements of applicable Canadian securities laws, provided that the trade is not a “control distribution” (as such term is defined in National Instrument 45-102 – Resale of Securities).

**SECTION 12. Representations and Warranties of the Holder.** The Holder hereby represents and warrants to the Company as of the Commencement Date and on each date that any Notice of Conversion is delivered to the Company that the Holder (a) is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, (b) is aware that the prospective investment in this Instrument and the Conversion Shares issuable upon exercise of the conversion rights under this Instrument, may involve a high degree of risk, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of such investment, (c) can bear the economic risks of its investment in this Instrument and the Conversion Shares issuable upon conversion hereunder, and (d) has had (i) access to representatives of the Company during the course of this transaction, prior to the creation of this Instrument and, if applicable, prior to the exercise of the conversion rights under this Instrument, (ii) the opportunity to ask questions of and receive answers from the Company and its representatives concerning the terms and conditions of this Instrument and the Conversion Shares, and (iii) the opportunity to obtain any additional information necessary to verify the information related to this Instrument, the Conversion Shares or otherwise to the business and proposed activities of the Company. In addition, the Holder is acquiring this Instrument, and any Conversion Shares issuable upon exercise of the conversion rights hereunder, solely for its own account, and such Instrument is being and will be acquired by such Holder solely for the purpose of investment and not with a view to resale of this Instrument (or any Conversion Shares issuable upon conversion hereunder) in connection with a distribution thereof in violation of the Securities Act. The Holder understands and acknowledges that this Instrument, and any Conversion Shares issuable upon conversion hereunder, may not be transferred or sold except pursuant to (A) the registration or qualification provisions of applicable securities laws or pursuant to an available exemption therefrom and (B) the terms of this Instrument. The Holder is not a resident of Canada and is investing in this Instrument as principal for its own account, not for the benefit of any other person, for investment only and not with a view to the resale or distribution of all or any of this Instrument or the Conversion Shares. Nothing in this Instrument shall be construed as conferring upon the Holder any right or interest whatsoever as a shareholder of the Company.

**SECTION 13. Definitions.**



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As used herein, in addition to the terms defined elsewhere herein, the following terms shall have the following meanings.

“\$” means lawful money of the United States.

“30-Day VWAP” means, as of any date, the volume weighted average trading price per Common Share, or any successor security thereto (rounded to the nearest second decimal place) on the Principal Market (as reported by Bloomberg L.P. (or its successor) or if not available, by Dow Jones & Company Inc., or if neither is available, by another authoritative source mutually agreed by the Company and the Holder) from 9:30 a.m. (New York City time) on the Trading Day that is thirty (30) Trading Days preceding such date to 4:00 p.m. (New York City time) on the last Trading Day immediately preceding such date.

“Administrative Agent” means Madryn Fund Administration, LLC, in its capacity as administrative agent under any of the Credit Agreement.

“Affiliate” has the meaning provided in the Credit Agreement.

“Aggregate Conversion Amount” means the aggregate amount of the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, that the Holder elects to convert into Conversion Shares as indicated by the Holder in the Notice of Conversion; provided that, in the case of an Automatic Exercise, the “Aggregate Conversion Amount” means the Maximum Conversion Amount then available.

“Alternate Consideration” has the meaning set forth in Section 5(b).

“Automatic Exercise” has the meaning set forth in Section 2(i).

“Board” means the board of directors of the Company.

“Business Day” has the meaning provided in the Credit Agreement.

“Cash Settlement Amount” has the meaning set forth in Section 2(d)(ii).

“Cash Settlement Date” has the meaning set forth in Section 2(d)(iii).

“Commencement Date” has the meaning set forth in the Preamble.

“Commission” means the United States Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act or the Exchange Act.

“Common Shares” has the meaning set forth in the Preamble.

“Company” has the meaning set forth in the Preamble.

“Conversion Price” has the meaning set forth in the Preamble.

“Conversion Securities” means this Instrument or any Conversion Shares issuable upon exercise of the conversion rights under this Instrument, in whole or in part.

“Conversion Shares” means (a) the Common Shares issued or issuable upon exercise of the conversion rights under this Instrument in accordance with its terms and (b) all other Equity Interests of the Company issued with respect to such Common Shares by way of stock dividends, split, conversions or other reclassification or in connection with any Fundamental Transaction, recapitalization or other reorganization affecting the Company’s Equity Interests.

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“Credit Agreement” has the meaning set forth in the Preamble.

“Day 1 U.S. Federal Withholding Taxes” shall mean U.S. federal withholding taxes imposed on amounts payable to or for the account of a Holder with respect to an interest in the Instrument pursuant to a law in effect on the date on which (i) such Holder acquires such interest in the Instrument (other than pursuant to an assignment request by the Borrower pursuant to Section 11.13 of the Credit Agreement) or (ii) such Holder changes its Lending Office (as defined in the Credit Agreement), except in each case to the extent that, pursuant to Section 3.01 of the Credit Agreement, amounts with respect to such taxes were payable either to the Holder’s assignor immediately before such Holder became a party hereto or to such Holder immediately before it changed its Lending Office (as defined in the Credit Agreement).

“Distributed Property” has the meaning set for in Section 5(a)(ii).

“Effectiveness Period” means the period beginning on the effective date for the Registration Statement and ending at the Registration Termination Time.

“Equity Interests” has the meaning provided in the Credit Agreement.

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

“Existing Registration Rights Agreement” means the Resale Registration Rights Agreement, dated June 14, 2021, by and among the Company and 1315 Capital II, L.P., Greybrook Health Inc., Marlin Fund, Limited Partnership, Marlin Fund II, Limited Partnership, MSS GB SPV LP and the other purchasers from time to time party thereto.

“Expiration Date” means the earlier to occur of (a) the Maturity Date (as defined in the Credit Agreement) and (b) the date as of which (i) all of the Commitments (as defined in the Credit Agreement) of the Holder, as a Lender under the Credit Agreement, have been terminated and (ii) all Obligations owing to the Holder, as a Lender under the Credit Agreement, have been paid in full in cash or upon earlier conversion of all or a portion of this Instrument (other than contingent indemnification obligations for which no claim has been asserted).

“Fair Market Value” means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board, acting reasonably, in good faith and evidenced by a written notice delivered promptly to the Holder (which written notice shall include certified resolutions of the Board in respect thereof). If the Holder objects in writing to the Board of Directors’ calculation of fair market value within ten (10) Business Days after receipt of written notice thereof, and the Holder and the Company are unable to agree on the fair market value during the ten (10) day period following the delivery of the Holder’s objection, then the Fair Market Value shall be determined by a disinterested appraiser (which may be a national investment bank or national accounting firm) mutually selected by the Company and the Holder, the fees and expenses of which shall be paid by the Company. Any selection of a disinterested appraiser shall be made in good faith within three (3) Business Days after the Holder provides written notice to the Company of its objection to the determination of the Fair Market Value and any determination of Fair Market Value by a disinterested appraiser shall be made within fifteen (15) days of the date of selection. For the avoidance of doubt, the Fair Market Value of cash shall be the amount of such cash.

“Fair Market Value Per Common Share” of one Common Share means as of any particular day (a) at the option of the Holder, either (i) the last reported sale price on the Nasdaq Capital Market and, if there are no sales, the last reported bid price, of the Common Shares on the Business Day prior to such date on the Principal Market on which the Common Shares are then listed or quoted as reported by Bloomberg Financial Markets or (ii) 30-Day VWAP as of such date, or (b) if the Fair Market Value Per Common Share cannot be calculated as of such date on the foregoing basis, the price determined in good faith by the Board, acting reasonably and in consultation with the Holder. Notwithstanding the foregoing if the determination of Fair Market Value Per Common Share is in connection with any Fundamental Transaction, then the Fair Market Value Per Common Share shall be the value per Conversion Share to be realized in such pending transaction.

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“Fundamental Transaction” means (a) any merger, amalgamation, arrangement, consolidation or similar transaction of the Company with or into another Person, (b)(i) a sale, lease, license, transfer, exchange or other disposition of all or substantially all the assets of the Company and its Subsidiaries on a consolidated basis or (ii) any license, sublicense or similar grant of rights, or series of such licenses or grants, with respect to any assets, including intellectual property assets, of the Company or any of its Subsidiaries which are material to the Company and its Subsidiaries on a consolidated basis to any Person or group of Persons other than a Subsidiary of the Company, (c) any reclassification of the Common Shares (other than a change to par value, or from par value to no par value or changes resulting from a combination or subdivision), or (d) any statutory exchange of the outstanding Common Shares, as a result of which, the holders of the Common Shares would be entitled to receive, or their Common Shares would be converted into, or exchanged for, other shares, other stock, other securities, or other property or assets (including cash or any combination thereof).

“Governmental Authority” has the meaning provided in the Credit Agreement.

“Holder” has the meaning set forth in the Preamble.

“Instrument” has the meaning set forth in the Preamble.

“Lender” has the meaning provided in the Credit Agreement.

“Loan” has the meaning provided in the Credit Agreement.

“Maximum Conversion Amount” means, (a) if, at the time of the exercise of the conversion rights under this Instrument, there is at least \$283,852.63 of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement as of such date, \$283,852.63, or, (b) if, at the time of exercise of the conversion rights under this Instrument, there is less than \$283,852.63 of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, the entire Outstanding Amount of Loans owing to the Holder at such time under the Credit Agreement.

“Nasdaq” has the meaning set forth in Section 2(d)(i).

“Net Exercise” has the meaning set forth in Section 2(c).

“Non-Share Settled Portion” has the meaning set forth in Section 2(d)(i).

“Notice of Conversion” has the meaning set forth in Section 2(a).

“Organization Documents” has the meaning provided in the Credit Agreement.

“Outstanding Amount” has the meaning provided in the Credit Agreement.

“Person” has the meaning provided in the Credit Agreement.

“Piggyback Registration Statement” has the meaning set forth in Section 10(c).

“Principal Market” initially means the Nasdaq Capital Market and any successor thereto that qualifies as a national securities exchange, inter-dealer quotation system or over-the-counter market, and shall also include the Nasdaq Global Market, the Nasdaq Global Select Market, New York Stock Exchange, Inc., the NYSE American or the OTC Bulletin Board, whichever is at the time the principal exchange or market for the Common Shares, based upon daily share volume.

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“Principal Office” means the Company’s principal office as set forth in Section 19 hereof or such other principal office of the Company in the United States of America the address of which shall have first been set forth in a notice to the Holder.

“Public Filings” has the meaning set forth in Section 11(g).

“Registrable Securities” means the Conversion Shares issuable upon exercise of the conversion rights under this Instrument.

“Registration Conditions” means (a) the Common Shares are listed on a Trading Market in the United States; and (B) the Company shall have received (or caused to be prepared) audited financial statements of Check Five LLC, a Delaware limited liability company (d/b/a Success TMS), to the extent such audited financial statements are required by applicable U.S. securities laws, rules and regulations (including, but not limited to, Rule 3-05 of Regulation S-X under the Securities Act) for the filing of the Registration Statement.

“Registration Expenses” means all expenses incident to the Company’s performance under or compliance with Section 10 of this Instrument to effect the registration of Registrable Securities on a Registration Statement or a Piggyback Registration Statement pursuant to Section 10 hereof or an underwritten offering, and the disposition of such Registrable Securities, including, without limitation, all registration, filing, securities exchange listing and fees required to be paid to the Principal Market for the Company’s Common Shares, all registration, filing, qualification and other fees and expenses of complying with securities or blue sky laws, fees of the Financial Industry Regulatory Authority, Inc., fees of transfer agents and registrars, all word processing, duplicating and printing expenses, any transfer taxes, and the fees and disbursements of counsel and independent public accountants for the Company, including the expenses of any special audits or “comfort” letters required by or incident to such performance and compliance, and the reasonable fees and disbursements of one counsel for the Holder participating in such Registration Statement, Piggyback Registration Statement or underwritten offering thereunder to effect the disposition of such Registrable Securities, selected by the Holder, subject to the reasonable consent of the Company; provided, that, if holders of registrable securities under the Existing Registration Rights Agreement are also participating in any such Piggyback Registration Statement or underwritten offering thereunder, then the counsel for such other holders shall be designated as the counsel for the Holder in connection therewith, except unless the Holder reasonably objects to such counsel (including, without limitation, by reasons of any conflict of interest).

“Registration Statement” has the meaning set forth in Section 10(a).

“Registration Termination Time” means the earliest to occur of the following: (a) when a registration statement covering Registrable Securities becomes or has been declared effective by the Commission and all such Registrable Securities have been sold or disposed of pursuant to such effective registration statement; (b) when all Registrable Securities have been sold or disposed of (excluding transfers or assignments by the Holder to an Affiliate) pursuant to Rule 144 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) under circumstances in which all of the applicable conditions of Rule 144 (as then in effect) are met; (c) when all Registrable Securities are held by the Company or one of its direct or indirect Subsidiaries; or (d) if the Holder beneficially owns less than one percent (1%) of outstanding Common Shares.

“Regulatory Requirement” has the meaning set forth in Section 9(g).

“Requested Shares” has the meaning set forth in Section 10(c).

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

“Share Combination” has the meaning set forth in Section 5(a)(i)(C).

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“Share Delivery Date” has the meaning set forth in Exhibit B.

“Share Distribution” has the meaning set forth in Section 5(a)(i)(A).

“Share Subdivision” has the meaning set forth in Section 5(a)(i)(B).

“Subsidiary” has the meaning provided in the Credit Agreement.

“Suspension Notice” has the meaning set forth in Section 10(f).

“Suspension Period” has the meaning set forth in Section 10(f).

“Trading Day” means, as applicable, (a) with respect to all price or trading volume determinations relating to the Common Shares, any day on which the Common Shares is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Shares, then on the principal securities exchange or securities market on which the Common Shares is then traded; **provided** that “Trading Day” shall not include any day on which the Common Shares is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Shares is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York City time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Shares, any day on which Nasdaq (or any successor thereto) is open for trading of securities.

“Trading Market” means whichever of the Toronto Stock Exchange, NYSE American, New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Capital Market, Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Shares are listed or quoted for trading on the date in question.

“Transfer Agent” means the Company’s designated transfer agent, as it may be changed from time to time.

“TSX” has the meaning set forth in Section 2(d)(i).

**SECTION 14. Survival of Provisions.** Upon the earlier of (a) the full exercise of the conversion rights under this Instrument and (b) the occurrence of the Expiration Date, as applicable, all of the provisions of this Instrument shall terminate, except that the provisions of Section 9, Section 10 and Section 13 through Section 27 of this Instrument shall expressly survive such exercise or Expiration Date until such time as the Holder no longer holds any Conversion Shares.

**SECTION 15. Equitable Relief.** Each of the Company and the Holder acknowledges that a breach by such party of any of its obligations under this Instrument would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief without posting bond or other security.

**SECTION 16. Waivers, Delays, Omissions and Indulgences.** It is agreed that no waivers, delay or omission to exercise any right, power or remedy accruing to the Holder upon any breach or default of the Company under this Instrument shall impair any such right, power or remedy, nor, unless explicitly stated in writing, shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring; nor, unless explicitly stated in writing, shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further

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agreed that any waiver, permit, consent or approval of any kind or character on the Holder' s part of any breach or default under this Instrument, or any waiver on the Holder' s part of any provisions or conditions of this Instrument must be in writing and that all remedies, either under this Instrument, or by law or otherwise afforded to the Holder, shall be cumulative and not alternative.

**SECTION 17. Rights of Transferees.** Subject to Section 7, the rights granted to the Holder hereunder of this Instrument shall pass to and inure to the benefit of all subsequent transferees of all or any portion of this Instrument (provided that the Holder and any transferee shall hold such rights in proportion to their respective ownership of this Instrument and the Conversion Shares) until extinguished pursuant to the terms hereof.

**SECTION 18. Captions.** The titles and captions of the Sections and other provisions of this Instrument are for convenience of reference only and are not to be considered in construing this Instrument.

**SECTION 19. Notices.** All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, e-mail, overnight courier service or personal delivery:

(a) if to the Company:

Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4  
Attention: Erns Loubser, Chief Financial Officer  
Phone No.: (416) 322-9700 x548  
Email: [eloubser@greenbrooktms.com](mailto:eloubser@greenbrooktms.com)

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

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, NY 10036-7703  
Attention: Christopher R. Bornhorst; Robbie Leibel  
Phone No.: (212) 880-6047; (416) 865-8201  
Email: [cbornhorst@torys.com](mailto:cbornhorst@torys.com); [rleibel@torys.com](mailto:rleibel@torys.com)

(b) if to the Holder:

Madryn Health Partners II, LP  
c/o Madryn Asset Management, LP  
330 Madison Avenue, 33<sup>rd</sup> Floor  
New York, NY 10017  
Attention: Avinash Amin  
Phone No.: (646) 560-5490  
Email: [aamin@madrynlp.com](mailto:aamin@madrynlp.com)

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

Moore & Van Allen PLLC  
100 North Tryon Street  
Suite 4700  
Charlotte, NC 28202  
Attention: Tripp Monroe; Sonny Ha  
Phone No.: 704.331.1107; 704.331.3595

All such notices and communications shall be deemed to have been duly given: (i) when delivered by hand, if personally delivered; (ii) when delivered by courier, if delivered by commercial overnight courier service; (iii) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; and (iv) upon actual receipt if given by electronic mail and such receipt is confirmed in writing by the recipient or is verified by electronic means.

**SECTION 20. Successors and Assigns.** This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that the Company shall have no right to assign its rights, or to delegate its obligations, hereunder without the prior written consent of the Holder, and any such assignment or delegation by the Company without the prior written consent of the Holder shall be null and void.

**SECTION 21. Amendments.** Neither this Instrument nor any term hereof may be amended, changed, waived, discharged or terminated without the prior written consent of the Holder and the Company to such action.

**SECTION 22. Severability.** If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

**SECTION 23. Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS INSTRUMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS INSTRUMENT OR THE ISSUANCE OF CONVERSION SHARES UPON EXERCISE OF THE CONVERSION RIGHTS UNDER THIS INSTRUMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** THE COMPANY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE HOLDER IN ANY WAY RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, IN ANY OTHER FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK AND ANY UNITED STATES DISTRICT COURT IN THE STATE OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF LOCATED IN NEW YORK COUNTY, NEW YORK, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE COMPANY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS INSTRUMENT SHALL AFFECT ANY RIGHT THAT THE HOLDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, AGAINST THE COMPANY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

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(c) **WAIVER OF VENUE.** THE COMPANY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, IN ANY COURT REFERRED TO IN SECTION 23(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 19. NOTHING IN THIS INSTRUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**SECTION 24. WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 25. Entire Agreement.** This Instrument and the Credit Agreement constitute a single integrated contract, which for greater certainty, provides that the terms of the Loans confer on the Holder of the Outstanding Amount of Loans the conversion rights set out in this Instrument, and are intended by the parties as a final expression of the agreement of the parties hereto and are intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein.

**SECTION 26. Counterparts; Manner of Delivery.** This Instrument may be executed in two 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, Uniform Electronic Transactions Act or other applicable law) 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.

**SECTION 27. Rules of Construction.** Unless the context otherwise requires “or” is not exclusive, and, unless otherwise specified, references to sections or subsections refer to sections or subsections of this Instrument. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

[Remainder of Page Intentionally Omitted.]



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**IN WITNESS WHEREOF**, the Company has caused this Instrument to be issued and executed in its corporate name by its duly authorized officers as of the date first written above.

**GREENBROOK TMS INC.**

By: /s/ Bill Leonard  
Name: Bill Leonard  
Title: President and Chief Executive Officer

[Signature Page to Common Share Conversion Instrument]

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**ACKNOWLEDGED AND AGREED TO AS OF THE DATE FIRST WRITTEN ABOVE:**

**HOLDER:**

**MADRYN HEALTH PARTNERS II, LP**

By: MADRYN HEALTH ADVISORS II, LP, its general partner

By: MADRYN HEALTH ADVISORS GP II,  
LLC, its general partner

By: /s/ Avinash Amin  
Name: Avinash Amin  
Title: Managing Member

**ADMINISTRATIVE AGENT:**

**MADRYN FUND ADMINISTRATION, LLC**

By: MADRYN ASSET MANAGEMENT, LP, its managing partner

By: MADRYN ASSET MANAGEMENT GP,  
LLC, its general partner

By: /s/ Avinash Amin  
Name: Avinash Amin  
Title: Sole Member

[Signature Page to Common Share Conversion Instrument]

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EXHIBIT A  
NOTICE OF CONVERSION

To: Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4

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

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, NY 10036-7703

Madryn Fund Administration, LLC, as Administrative Agent  
c/o Madryn Asset Management, LP  
330 Madison Avenue, 33rd Floor  
New York, NY 10017

1. The undersigned, pursuant to the provisions of the attached Instrument, hereby elects to exercise its conversion rights under such Instrument with respect to \$ \_\_\_\_\_ (the "Aggregate Conversion Amount") of the Outstanding Amount of the Loans owing to the undersigned under the Credit Agreement and hereby directs the Company to allot and issue \_\_\_\_\_ Conversion Shares to it. Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Instrument.

2. The undersigned herewith:

acknowledges and agrees that as payment in respect of the subscription price for such Conversion Shares, simultaneously with the allotment and issuance of the number of Conversion Shares specified above, the Aggregate Conversion Amount will be deemed repaid in accordance with Section 2.14 of the Credit Agreement; or

tenders payment in respect of the subscription price for such Conversion Shares by Net Exercise as provided in Section 2(c) of the attached Instrument.

3. Please allot and issue the Conversion Shares issuable in respect hereof under the terms of the attached Instrument, as follows:

\_\_\_\_\_  
(Name of Record Holder/Transferee)

The address of the holder of such Conversion Shares for inclusion in the books and register of shareholders of the Company is as follows:

\_\_\_\_\_  
(Address of Record Holder/Transferee)

4. The undersigned represents that the aforesaid Conversion Shares are being subscribed for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such Conversion Shares. The undersigned further re-confirms each of the other representations and warranties provided by it in the attached Instrument.

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5. If the Aggregate Conversion Amount is less than the Maximum Conversion Amount then available that may be converted into Conversion Shares under the Instrument, please issue a new conversion instrument representing the remaining balance available for subsequent conversion into Conversion Shares, being an amount equal to (a) the Maximum Conversion Amount available immediately prior to the exercise of the conversion rights hereby, minus (b) the Aggregate Conversion Amount, as follows:

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(Name of Record Holder/Transferee)

and deliver such new conversion instrument to the following address:

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(Address of Record Holder/Transferee)

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(Signature)

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(Date)

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EXHIBIT B  
PROCEDURES FOR ISSUANCE OF CONVERSION SHARES UPON EXERCISE

The procedures, rights and obligations set forth in this Exhibit B shall apply to the issuance and settlement of Conversion Shares pursuant to any Notice of Conversion delivered by the Holder or any Automatic Exercise, as applicable, pursuant to the attached Instrument, unless the Cash Settlement Amount is paid or proposed to be paid in accordance with Section 2(d) of the attached Instrument. Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Instrument.

(a) (x) Unless otherwise designated by the Holder in the applicable Notice of Conversion, on or before the fifth (5<sup>th</sup>) Trading Day following the date on which the Company has received such Notice of Conversion; provided, that, such date shall be extended by up to five (5) Trading Days in the event the Company is required to adjust the Conversion Price in accordance with Section 5 of the attached Instrument, or (y) following any Automatic Exercise, on the Expiration Date (as applicable, the "Share Delivery Date"), the Company shall:

(i) if (A) there is an effective registration statement filed pursuant to the Securities Act covering the resale of such Conversion Shares by the Holder and (B) it is not otherwise deemed necessary under applicable securities laws for a restrictive legend to be affixed on such Conversion Shares upon issuance to the Holder, and, in each case, the Transfer Agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program ("FAST"), upon the request of the Holder, credit such aggregate number of Conversion Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system; or

(ii) if (A) there is no effective registration statement filed pursuant to the Securities Act covering the resale of such Conversion Shares by the Holder, (B) it is deemed necessary under applicable securities laws for a restrictive legend to be affixed on such Conversion Shares upon issuance to the Holder, and/or (C) if the Transfer Agent is not then participating in the DTC's FAST, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Notice of Conversion (or, in the case of an Automatic Exercise, to any address specified by the Holder in writing), a Direct Registration System statement, registered in the name of the Holder or its designee, for the number of Conversion Shares to which the Holder shall be entitled pursuant to such exercise, and if applicable, including a restrictive legend thereon.

If any restrictive legend is placed on Conversion Shares, the Company agrees that, as promptly as practicable following the Legend Removal Date (as defined below) in respect of such Conversion Shares, it will, subject to receipt of such representations and covenants of the Holder and the Holder's executing broker, if any, as the Company or the Transfer Agent may reasonably require in connection therewith, deliver or cause to be delivered to the Holder a book entry position representing such Conversion Shares that is free from any restrictive legend (and the Company shall cause to be issued any legal opinion required by the Transfer Agent with respect thereto). The Company shall not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this section, except as may be required under applicable securities laws. To the extent that book entry positions are issued representing the Conversion Shares, such book entry positions subject to legend removal hereunder shall be delivered by the Transfer Agent to the Holder by issuing to the Holder by electronic delivery at the applicable balance account at DTC, the Transfer Agent or any custodian of the Holder, as applicable, at the Holder's election. Any fees (with respect to the Transfer Agent, the Company's counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. "Legend Removal Date", in respect of any Conversion Shares, means the earliest of the date that (A) the

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Company has received appropriate notice from the Holder that such Conversion Shares have been or are being sold or transferred pursuant to an effective registration statement under the Securities Act, (B) the Company has received appropriate notice from the Holder that such Conversion Shares have been or are being sold or transferred pursuant to Rule 144 (if the transferor is not an affiliate of the Company); or (C) the Company has received appropriate notice from the Holder that such Conversion Shares are eligible for resale under Rule 144 without volume or manner-of-sale restrictions.

(b) Upon delivery of a Notice of Conversion or any Automatic Exercise, as applicable, the Holder shall be deemed to have become the registered legal and beneficial owner of the Conversion Shares with respect to which the conversion rights under this Instrument have been exercised, irrespective of the date such Conversion Shares are credited to the Holder's DTC account or the date of delivery of the certificate(s) evidencing such Conversion Shares (as the case may be). If the attached Instrument is submitted in connection with any exercise of the conversion rights pursuant to Section 2(e) of the attached Instrument and the Maximum Conversion Amount then available for conversion into Conversion Shares is greater than the Aggregate Conversion Amount being converted into Conversion Shares upon such exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than two (2) Business Days after the date of settlement pursuant to Section 2(e) of the attached Instrument and, at its own expense, issue and deliver to the Holder (or its designee) a new conversion instrument representing the right to convert the newly calculated maximum amount, after giving effect to such exercise, of the Outstanding Amount of Loans owing to the Holder for subscription for Conversion Shares (such newly calculated maximum amount being an amount equal to (i) the Maximum Conversion Amount which was available for conversion immediately prior to such exercise, minus (ii) the Aggregate Conversion Amount for such exercise).

(c) The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance of Conversion Shares upon exercise of the conversion rights under the attached Instrument (but not any subsequent transfer of Conversion Shares so issued).

(d) Notwithstanding any other provision in this Agreement, the Holder may elect, at its sole discretion, to receive unregistered Conversion Shares issued in response to a Notice of Conversion or any Automatic Exercise instead of Conversion Shares registered pursuant to any registration statement filed with the Commission to register the Conversion Shares. In such case, the Holder agrees and acknowledges that any such unregistered Conversion Shares shall bear a securities law legend substantially similar to the legend on the facing page of the attached Instrument, to the extent required by applicable securities laws.

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EXHIBIT C  
FORM OF SELLING SECURITYHOLDER QUESTIONNAIRE

[See attached]

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**GREENBROOK TMS INC.**

**SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE**

The undersigned beneficial owner of common shares (the “*Common Shares*”) of GREENBROOK TMS INC. (the “*Company*”) understands that the Company has filed or intends to file with the United States Securities and Exchange Commission (the “*Commission*”) a Registration Statement for the registration and resale of the Registrable Securities, in accordance with the terms of the Fifth Amended and Restated Common Share Conversion Instrument, dated as of August 1, 2023 (the “*Conversion Instrument*”), among the Company and the Holder (as defined therein). A copy of the Conversion Instrument is available from the Company upon request at the address set forth below. All capitalized terms used and not otherwise defined herein will have the meanings ascribed thereto in the Conversion Instrument.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**1. Name.**

(a) Full Legal Name of Selling Securityholder

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities Listed in Item 3 below are held:

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by the questionnaire):

**2. Address for Notices to Selling Securityholder:**

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**3. Beneficial Ownership of Registrable Securities:**

(a) Type and Amount of Registrable Securities Beneficially Owned:

\_\_\_\_\_



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**4. Broker-Dealer Status:**

- (a) Are you a broker-dealer?  
Yes  No

Note: If yes, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

- (b) Are you an affiliate of a broker-dealer?  
Yes  No

- (c) If you are an affiliate of a broker-dealer, do you certify that you bought the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?  
Yes  No

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

**5. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.**

Except as set forth below in this Item 5, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item 3.

Type and Amount of Other Securities Beneficially Owned by the Selling Securityholder:

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**6. Relationships with the Company:**

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: \_\_\_\_\_

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The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the Effective Date for the Registration Statement.

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By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus.

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**IN WITNESS WHEREOF** the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

**Beneficial Owner:**

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

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

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

**PLEASE E-MAIL A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**

Greenbrook TMS Inc.  
890 Yonge Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
Canada M4W 3P4  
Email: eloubser@greenbrooktms.com  
Attention: Erns Loubser, Chief Financial Officer

***With a copy to:***

Christopher R. Bornhorst  
Torys LLP  
1114 Avenue of The Americas, 23<sup>rd</sup> Floor  
New York, NY 10036  
Email: cbornhorst@torys.com

NEITHER THE SECURITIES REPRESENTED HEREBY NOR THE COMMON SHARES ISSUABLE UPON CONVERSION HEREOF HAVE BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR QUALIFIED OR REGISTERED PURSUANT TO ANY U.S. STATE OR CANADIAN PROVINCIAL OR TERRITORIAL SECURITIES LAWS OR THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION. THE SECURITIES REPRESENTED HEREBY AND THE COMMON SHARES ISSUABLE UPON CONVERSION HEREOF MAY BE RESOLD ONLY IF REGISTERED PURSUANT TO THE PROVISIONS OF THE SECURITIES ACT AND QUALIFIED OR REGISTERED PURSUANT TO APPLICABLE U.S. STATE, CANADIAN PROVINCIAL OR TERRITORIAL SECURITIES LAWS, AND/OR THE SECURITIES LAWS OF ANY OTHER APPLICABLE JURISDICTION, OR IF AN EXEMPTION FROM SUCH REGISTRATION AND QUALIFICATION REQUIREMENT IS AVAILABLE.

**GREENBROOK TMS INC.**

**FIFTH AMENDED AND RESTATED COMMON SHARE CONVERSION INSTRUMENT**

Amended and Restated: August 1, 2023

Date of Issuance: July 14, 2022

Series No. 2022-A

Certificate No. 2

THIS IS TO CERTIFY that Madryn Health Partners II (Cayman Master), LP and its transferees, successors and assigns (the “Holder”) shall have the right (but not the obligation) to convert the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, into common shares, without par value (the “Common Shares”) in the capital of Greenbrook TMS Inc., a corporation incorporated under the laws of the Province of Ontario (the “Company”), at the initial conversion price of \$1.90 per Common Share (the “Conversion Price”), at any time after the date of issuance listed above (the “Commencement Date”) and expiring on the Expiration Date. This Fifth Amended and Restated Common Share Conversion Instrument (this “Instrument”) is issued subject to the Organization Documents of the Company and under and pursuant to that certain Credit Agreement, dated as of July 14, 2022, by and among the Company, the Holder, and the other parties thereto (as amended, modified or supplemented from time to time, the “Credit Agreement”). Capitalized terms used herein shall have the meanings ascribed to such terms in Section 13 hereof unless otherwise defined herein.

This Instrument amends, restates and replaces in its entirety that certain Fourth Amended and Restated Common Share Conversion Instrument dated as of March 27, 2023, issued by the Company to the Holder.

**SECTION 1. The Instrument: Transfer and Exchange.**

(a) The Instrument. This Instrument and the rights and privileges of the Holder hereunder may be exercised in whole or in part as provided herein and, as more fully set forth in Section 1(b) and Section 7 hereof, may, subject to applicable securities laws and the terms of this Instrument, be transferred by the Holder to any other Person or Persons who meet the requirements set forth herein at any time or from time to time, in whole or in part.

(b) Transfer and Exchanges. The Company shall initially record this Instrument in a register maintained by the Company for that purpose and subject to Section 7 hereof, from time to time thereafter shall reflect the transfer of this Instrument on such register when surrendered for transfer in accordance with the terms hereof and properly endorsed, accompanied by appropriate instructions, and further accompanied by payment in cash or by check, bank draft or money order payable to the order of the Company, in United States currency, of

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an amount equal to any stamp or other tax or governmental charge or fee required to be paid in connection with the transfer thereof. Upon any such transfer, a new conversion instrument or conversion instruments shall be issued to and in the name of the transferee and the Holder (in the event this Instrument is only partially transferred or in connection with any concurrent partial transfer and partial exercise) and the surrendered conversion instrument shall be canceled and the Company shall update the register accordingly. This Instrument may be exchanged at the option of the Holder, when surrendered at the Principal Office of the Company, for another conversion instrument or other conversion instruments of like tenor and representing in the aggregate the right to convert a like amount of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, into a like number of Common Shares at the Conversion Price (as such number may be adjusted upon adjustment of the Conversion Price as provided in [Section 5](#)).

## **SECTION 2. Exercise.**

(a) Right to Exercise. At any time after the Commencement Date and on or before the Expiration Date, the Holder, in accordance with applicable securities laws and the terms hereof, shall be entitled to exercise the conversion rights under this Instrument, in whole at any time or in part from time to time, by delivering this Instrument to the Company during normal business hours on any Business Day at the Company's Principal Office, together with the Notice of Conversion (with a copy to the Administrative Agent), in the form attached hereto as [Exhibit A](#) and made a part hereof (the "Notice of Conversion"), duly executed. The Holder shall not be required to deliver the original of this Instrument in order to effect an exercise hereunder. Subject to [Section 2\(c\)](#), the aggregate number of Conversion Shares to be subscribed for by the Holder pursuant to the applicable Notice of Conversion shall be equal to the amount calculated by dividing (i) the Aggregate Conversion Amount by (ii) the Conversion Price then in effect.

(b) Conversion of the Aggregate Conversion Amount. For any exercise, in whole or in part, of the conversion rights under this Instrument, payment of the Aggregate Conversion Amount shall be made to the Company by (i) automatically reducing the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement by an amount equal to the Aggregate Conversion Amount or (ii) a Net Exercise as provided in [Section 2\(c\)](#). Other than in the case of a Net Exercise in accordance with [Section 2\(c\)](#), simultaneously with the allotment and issuance of Conversion Shares, or the payment of the applicable Cash Settlement Amount, as the case may be, pursuant to [Section 2\(e\)](#), the Outstanding Amount of the Loans in an amount equal to the Aggregate Conversion Amount shall be deemed repaid under the Credit Agreement in accordance with Section 2.14 thereof. Following any exercise, in whole or in part, of the conversion rights under this Instrument, the Maximum Conversion Amount available for any subsequent exercise of the conversion rights under this Instrument shall be reduced by the Aggregate Conversion Amount paid by the Holder in connection with such exercise.

(c) Net Exercise. The Holder shall have the right to pay all or a portion of the Aggregate Conversion Amount by making a net exercise ("Net Exercise"), in which case the portion of the Aggregate Conversion Amount to be so paid shall be paid by reducing the number of Conversion Shares otherwise issuable pursuant to the Notice of Exercise by an amount equal to (i) the Aggregate Conversion Amount to be so paid, divided by (ii) the Fair Market Value Per Common Share. For the avoidance of doubt, in the case of a Net Exercise by the Holder, no amount of the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement shall be reduced or deemed repaid.

### **(d) Cash Settlement.**

(i) Notwithstanding any other provision of this Instrument, if, following the exercise of the conversion rights under this Instrument, (A) the applicable rules of the Toronto Stock Exchange ("TSX") or The Nasdaq Stock Market LLC ("Nasdaq") require approval by TSX or Nasdaq, as applicable, for any allotment or issuance of any number of Conversion Shares by the Company with respect to all or any portion of the Aggregate Conversion Amount, and the Company is unable to obtain such approval by using commercially reasonable efforts, (B) on or prior to the Share Delivery Date, the Company makes a written request to satisfy its obligations under this Instrument by means other than such allotment and

issuance of such number of Conversion Shares, and the Holder, in its sole and absolute discretion, accepts such request, or (C) the Company fails for any reason to allot and issue the applicable number of Conversion Shares with respect to all or any portion of the Aggregate Conversion Amount on or prior to the Share Delivery Date, and the Holder, in its sole and absolute discretion, elects to require the Company to satisfy its obligations under this Instrument by means other than such allotment and issuance of such applicable number of Conversion Shares (any such portion of the Aggregate Conversion Amount referred to in Section 2(d)(i)(A), (B) or (C), the “Non-Share Settled Portion”), then, in each case, the Company shall, in lieu of allotting and issuing to the Holder the applicable number of Conversion Shares with respect to the Non-Share Settled Portion, pay the applicable Cash Settlement Amount to the Holder for such Non-Share Settled Portion. Notwithstanding the foregoing, in the case of any Automatic Exercise pursuant to Section 2(i), the Company shall not be permitted to satisfy its obligations under this Instrument by means of payment of the applicable Cash Settlement Amount to the Holder, other than payment of the Cash Settlement Amount for the Non-Share Settled Portion referred to in Section 2(d)(i)(A).

(ii) The cash settlement amount (the “Cash Settlement Amount”) for any Non-Share Settled Portion shall be calculated as of the date of exercise of this Instrument and shall be equal to the product of (A) the Fair Market Value Per Common Share, multiplied by (B) the number of Conversion Shares which would, but for the occurrence of any event referred to in Section 2(d)(i)(A), (B) or (C), have been issuable to the Holder upon exercise of the conversion rights under this Instrument with respect to such Non-Share Settled Portion.

(iii) The Company shall be required to pay any Cash Settlement Amount to the Holder on or before the following applicable date (each, a “Cash Settlement Date”): (A) if such payment is required under Section 2(d)(i)(A), the Share Delivery Date; (B) if such payment is required under Section 2(d)(i)(B), the fifth (5<sup>th</sup>) Business Day following the date of the Holder’s acceptance of the written request of the Company referred to in Section 2(d)(i)(B); or (C) if such payment is required under Section 2(d)(i)(C), the third (3<sup>rd</sup>) Business Day following the date of the Holder’s election referred to Section 2(d)(i)(C). Notwithstanding the foregoing, the Cash Settlement Date (other than the Cash Settlement Date in connection with any Cash Settlement Amount to be paid upon any Automatic Exercise) shall be extended by up to five (5) Business Days in the event the Company is required to adjust the Conversion Price in accordance with Section 5.

(iv) The Company covenants and agrees that, after the date of issuance set forth above, it shall not, without the prior written consent of the Holder, enter into or agree to become subject to specific or direct contractual term, condition, provision or agreement that would specifically prohibit the performance of the Company’s obligations to pay the applicable Cash Settlement Amount under this Section 2(d).

(e) Issuance of Conversion Shares or Payment of Cash Settlement Amount Upon Exercise. Upon (x) receipt by the Company of a Notice of Conversion at its Principal Office in proper form for exercise or (y) any Net Exercise as provided in Section 2(e) or any Automatic Exercise as provided in Section 2(i), the Company shall:

(i) allot and issue to the Holder, without delay and in any case on or prior to the Share Delivery Date, the number of Conversion Shares specified in the Notice of Conversion as set forth in Exhibit B hereto; or

(ii) if applicable, pay to the Holder the applicable Cash Settlement Amount in accordance with Section 2(d),

and, in each case, simultaneously deliver to the Holder, without duplication, all Distributed Property that the Holder is entitled to receive pursuant to Section 5(a)(ii).

(f) Fractional Shares. If any fraction of a Conversion Share would be deliverable upon an exercise of this Instrument, the Company may, in lieu of delivering such fraction of a Conversion Share, make a cash payment to the Holder in an amount equal to the same fraction of the Fair Market Value Per Common Share determined as of the date of exercise of this Instrument.

(g) Partial Exercise. In the event that the Holder exercises this Instrument in part from time to time, there shall be no restriction on the number of times the Holder may exercise its conversion rights under this Instrument to subscribe for Conversion Shares or the minimum number of Conversion Shares that the Holder shall be required to subscribe for upon any partial exercise of its conversion rights under this Instrument. Upon any partial exercise of this Instrument, the Company shall issue and deliver to the Holder a new conversion instrument in like form for the unexercised portion thereof which has not expired.

(h) Common Shares. The Common Shares issued pursuant to this Instrument shall:

(i) rank equally in all respects from the effective date of issue with the Common Shares then in issue (if any);

(ii) be entitled to all dividends and distributions declared or paid on any date or by reference to any date on or after the date on which the relevant Notice of Conversion is delivered to the Principal Office (or at such other address as the Company may designate by notice in writing to the Holder in accordance with the terms hereof); and

(iii) otherwise have the rights and privileges under applicable law and as prescribed in the Organization Documents of the Company from time to time.

(i) Automatic Exercise. Unless the Holder has expressly notified the Company in writing at least five (5) Business Days prior to the Expiration Date that such Holder either (a) elects not to exercise the conversion rights under this Instrument and that such Holder will instead let this Instrument expire on the Expiration Date or (b) will exercise the conversion rights under this Instrument on or prior to the Expiration Date by a method other than as set forth in this Section 2(i), if the Fair Market Value Per Common Share determined as of the Expiration Date is greater than the Conversion Price then in effect, the Holder shall be deemed, without further act by the Holder (and, for avoidance of doubt, without any delivery of this Instrument or the Notice of Conversion to the Company), for all purposes of this Instrument, to have automatically exercised in full, by a Net Exercise in accordance with Section 2(c), its conversion rights under this Instrument on the Expiration Date (an "Automatic Exercise"). If the Expiration Date is expected to occur pursuant to clause (b) of the definition thereof, the Company shall deliver the Holder a written notice of such expected occurrence of such Expiration Date at least ten (10) Business Days prior to such expected occurrence of such Expiration Date with the view to allowing the Holder sufficient time to opt out of any Automatic Exercise on such expected Expiration Date.

(j) Company's Failure to Timely Deliver Securities or Pay Cash Settlement Amount.

(i) The Company understands that a delay in the delivery of the Conversion Shares after the Share Delivery Date or payment of the Cash Settlement Amount after the applicable Cash Settlement Date could result in economic loss to the Holder. As compensation to the Holder for such loss, if the Company fails to (A) cause the Transfer Agent to transmit to the Holder the Conversion Shares on or before the Share Delivery Date in accordance with the provisions of Exhibit B pursuant to an exercise of the conversion rights under this Instrument (other than a failure caused by incorrect or incomplete information provided by the Holder to the Company) or (B) pay the Cash Settlement Amount to the Holder on or before the applicable Cash Settlement Date, the Company agrees to pay (as liquidated damages and not as a penalty) to the Holder for late issuance of the Conversion Shares the proportionate amount of \$100 per Trading Day (increasing to \$200 per Trading Day after the tenth (10<sup>th</sup>) Trading Day) after the Share Delivery Date or the applicable Cash Settlement Date, as applicable, for each \$10,000 of Aggregate Conversion Amount for which the conversion rights under this Instrument is exercised which are not timely delivered or paid, respectively. Notwithstanding anything to the contrary contained in this Instrument, the Company shall not be required to pay any amounts under this Section 2(j) during the first five (5) Trading Days of any late issuance or delivery of Conversion Shares or Cash Settlement Amounts, as applicable, in connection with an Automatic Exercise.

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(ii) Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon exercise of the conversion rights under this Instrument. The Company shall pay any payments incurred under this Section 2(j) in immediately available funds upon demand.

(k) Securities Law Legend(s). The Holder agrees and acknowledges, by receipt of this Instrument, that this Instrument, and any Conversion Shares issuable upon conversion hereof, shall bear a securities law legend substantially similar to the legend on the facing page of this Instrument, to the extent required by applicable securities laws. The Company acknowledges and agrees that Conversion Shares issuable upon exercise of the conversion rights under this Instrument shall not be required to contain any legend while a registration statement (including the Registration Statement) covering the resale of such Conversion Shares is effective under the Securities Act.

(l) Administrative Agent's Acknowledgement. The Administrative Agent acknowledges the terms of this Instrument and agrees that, upon exercise of the conversion rights under this Instrument, the Administrative Agent shall perform its duties and exercise its rights and powers under the Credit Agreement, including, without limitation, in accordance with the terms of Section 2.14 thereof, to give effect to any corresponding deemed repayment of the Outstanding Amount of Loans under the Credit Agreement in an amount equal to the Aggregate Conversion Amount.

**SECTION 3. Payment of Taxes.** The Company shall promptly pay any and all stamp, documentary, registration or similar tax or taxes in connection with the entry into, performance, enforcement or admissibility in evidence of this Instrument or attributable to the initial issuance of Conversion Shares or other securities issuable upon the exercise of the conversion rights under this Instrument or issuable pursuant to Section 5 hereof, excluding any tax or taxes which may be payable because of the transfer involved in the issuance or delivery of any certificates for Conversion Shares or other securities in a name other than that of the Holder in respect of which such Conversion Shares or securities are issued. Any and all payments by or on account of any obligation of the Company hereunder (whether paid in cash or otherwise) shall be made free and clear of and without deduction or withholding for any taxes except as required by applicable law; provided that, if the Company is required to deduct or withhold any taxes hereunder then (a) the amount payable shall be increased as necessary so that, after making all required deductions or withholdings (including deductions or withholdings applicable to additional amounts payable under this Section 3), the Holder receives an amount (in cash or otherwise) equal to the amount it would have received had no such deduction or withholding been made; provided, that no gross-up shall be required in respect of Day 1 U.S. Federal Withholding Taxes, (b) the Company shall make such required deduction or withholding, and (c) the Company shall pay to the relevant taxation authority the full amount deducted or withheld in accordance with, and within the time limits prescribed by, applicable law. The Company shall provide the Holder with copies of receipts or other communications relating to the remittance of such withheld amount or the filing of such forms received from such taxation authority promptly after receipt thereof. The Company shall indemnify the Holder, within ten (10) days after written demand therefor, for the full amount of any taxes (other than taxes computed by reference to net income of the Holder) paid or payable by the Holder, on or with respect to any payment (whether paid in cash or otherwise) by or on account of any obligation of the Company hereunder (including taxes (other than taxes computed by reference to net income of the Holder) imposed or asserted on or attributable to amounts payable under this Section 3) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant taxation authority.



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**SECTION 4. Replacement Instrument.** In case this Instrument is mutilated, lost, stolen or destroyed, the Company shall issue and deliver in exchange and substitution for and upon cancellation of the mutilated Instrument, or in lieu of and in substitution for the Instrument lost, stolen or destroyed, a new Instrument of like tenor and representing an equivalent right or interest, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction of such Instrument and upon receipt of indemnity reasonably satisfactory to the Company; provided, that if the Holder is a financial institution, business development company or other institutional or fund investor, its own agreement shall be satisfactory.

**SECTION 5. Adjustments to the Conversion Price.**

Under certain conditions, the Conversion Price is subject to adjustment as set forth in this Section 5.

(a) Adjustments. The Conversion Price, after taking into consideration any prior adjustments pursuant to this Section 5, shall be subject to adjustment from time to time as follows and, thereafter, as adjusted, shall be deemed to be the then applicable Conversion Price hereunder, subject to further adjustment.

(i) Common Share Distributions. Subdivisions and Combinations. In case at any time or from time to time the Company shall:

(A) issue to the holders of its Common Shares a dividend payable in, or other distribution of, Common Shares, bonus shares or other Equity Interests of the Company (a "Share Distribution"),

(B) subdivide its issued Common Shares into a larger number of Common Shares, including without limitation, by means of a stock split (a "Share Subdivision"), or

(C) combine its issued Common Shares into a smaller number of Common Shares (a "Share Combination"),

then the Conversion Price shall be (x) proportionately decreased in the case of a Share Distribution or a Share Subdivision and (y) proportionately increased in the case of a Share Combination. In the event the Company shall declare or pay, without consideration, any dividend on the Common Shares payable in any right to acquire Common Shares for no consideration, then the Company shall be deemed to have made a Share Distribution in an amount of Common Shares equal to the maximum number of Common Shares issuable upon exercise of such rights to acquire Common Shares. Any adjustment under this Section 5(a) shall become effective at the close of business on the date the Share Subdivision or Share Combination becomes effective, or upon the making of any Share Distribution.

(ii) Distributions. If the Company, at any time while this Instrument is outstanding, distributes to all holders of Common Shares for no consideration (A) evidence of its indebtedness, (B) any security (other than a Share Distribution), (C) rights or warrants to subscribe for or purchase any security (other than any deemed Share Distribution referred to in Section 5(a)(i)), or (D) any other asset, including cash or any other assets by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction (in each case, "Distributed Property"), then, upon any exercise of the conversion rights under this Instrument that occurs after the record date fixed for determination of shareholders entitled to receive such distribution, the Holder shall be entitled to receive, in addition to the Conversion Shares otherwise issuable upon such exercise (if applicable), the Distributed Property that such Holder would have been entitled to receive in respect of such number of Conversion Shares had the Holder been the record holder of such Conversion Shares in respect of the then-unexercised portion of this Instrument immediately prior to such record date without regard to any limitation on exercise contained therein.

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(b) Fundamental Transactions. If, at any time while this Instrument is outstanding, the Company effects a Fundamental Transaction, then, to the extent then permitted under applicable laws, rules and regulations (including the rules of the Principal Market (or such other national securities exchange on which the Common Shares are then listed and traded), upon any subsequent exercise of the conversion rights under this Instrument, the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash, assets or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of the number of Conversion Shares then issuable upon exercise in full of the conversion rights under this Instrument without regard to any limitations on exercise contained herein, subject to adjustments from and after the consummation date as nearly equivalent as possible to the adjustments provided for in this Section 5 (the “Alternate Consideration”). The Company shall not effect any such Fundamental Transaction unless prior to or simultaneously with the consummation thereof, any successor to the Company or surviving entity shall have (i) assumed, by written instrument delivered to the Holder, the obligation to deliver to the Holder, such Alternate Consideration as, in accordance with the foregoing provisions, the Holder may be entitled to receive, and the other obligations under this Instrument, and (ii) delivered to the Holder an opinion of counsel for such corporation or entity, satisfactory to the Holder, which opinion shall state that all of the terms of this Instrument applicable in respect of such Alternative Consideration shall be enforceable against the Company and such successor or surviving entity in accordance with the terms hereof and thereof, together with such other matters as the Holder may reasonably request. In any such case, appropriate provisions shall be made with respect to the rights and interest of the Holder so that the provisions hereof shall thereafter be applicable with respect to such Alternate Consideration deliverable upon exercise of the conversion rights hereunder, and appropriate equitable adjustments shall be made to the Conversion Price payable hereunder; provided that the Maximum Conversion Amount shall remain the same (and, for the avoidance of doubt, this Instrument shall be exclusively exercisable for such Alternate Consideration from and after the consummation of such Fundamental Transaction). The provisions of this Section 5(b) shall similarly apply to subsequent transactions analogous to a Fundamental Transaction.

(c) Notices.

(i) Notice of Proposed Actions. The Company shall give to the Holder advance written notice of any proposed action by the Company or any of its Subsidiaries pursuant to which an adjustment to the Conversion Price may occur pursuant to this Section 5 as promptly as practicable and in any event within five (5) Business Days after the approval of such action or entry into any agreement to give effective to such action, which written notice shall specify the proposed date on which a record is to be taken for the purposes of any Share Distribution or distribution of any Distributed Property, or the proposed date on which any reclassification, reorganization, consolidation, merger, stock exchange, sale, transfer, disposition, liquidation, dissolution, winding up, Fundamental Transaction or other transaction is to take place and the date of participation therein by the holders of Common Shares of the Company, if any such date is to be fixed, or the proposed date on which the transfer of Common Shares is to occur, and shall also set forth such facts with respect thereto as shall be necessary to indicate the effect of such action on the Common Shares and on the Conversion Price after giving effect to any adjustment which will be required as a result of such action.

(ii) Adjustment Notice. Whenever the Conversion Price is to be adjusted pursuant to this Section 5, unless otherwise agreed by the Holder, the Company shall promptly (and in any event within five (5) Business Days after the event requiring the adjustment) prepare and deliver to the Holder a certificate signed by the chief financial officer of the Company, setting forth, in reasonable detail, the event requiring the adjustment and the method by which such adjustment is to be calculated. The certificate shall set forth, if applicable, a description of the basis on which the Board in good faith determined, as applicable, the equitable nature of any adjustment under Section 5(b) hereof and the new Conversion Price, as applicable.

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**SECTION 6. No Dilution or Impairment.** The Company will not, by amendment of its Organization Documents or through any reorganization, recapitalization, transfer of assets, consolidation, merger, share exchange, dissolution or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Instrument, including, without limitation, the adjustments required under Section 5 hereof, if any, and will at all times in good faith assist in the carrying out of all such terms and in taking of all such action as may be necessary or appropriate to protect the rights of the Holder against dilution or other impairment, subject to compliance with applicable securities laws and stock exchange rules and regulations. Without limiting the generality of the foregoing and notwithstanding any other provision of this Instrument to the contrary (including by way of implication), the Company will take all such action as may be necessary or appropriate so that the Company may validly and legally issue Conversion Shares to the Holder upon the exercise of the conversion rights under this Instrument.

**SECTION 7. Transfers of this Instrument.**

(a) Generally. Subject to the restrictions set forth in this Section 7, the Holder may, at any time and from time to time, assign or transfer this Instrument and the Conversion Shares, in each case in whole or in part, without the prior written consent of the Company. The transferor shall be deemed to remain the holder of this Instrument until the name of the transferee is entered in the Company register in respect of this Instrument. This Instrument has not been, and the Conversion Shares at the time of their issuance may not be, registered under the Securities Act or qualified or registered under any applicable Canadian securities laws. Accordingly, the Company's obligation to issue Conversion Shares upon exercise of this Instrument by any such transferee shall be subject to compliance with applicable securities laws, and the Company reserves the right to obtain such information from the transferee as it may reasonably request to confirm the applicability of an available exemption from registration or qualification under applicable securities laws, including, without limitation, confirmation of representations and warranties substantially similar to those set forth in Section 12. This Instrument and the Conversion Shares are issued or issuable subject to the provisions and conditions contained herein and in the Credit Agreement and to the provisions and conditions contained in the Organization Documents of the Company, and the Holder by accepting the same agrees with the Company to such provisions and conditions, and represents to the Company that this Instrument has been acquired and the Conversion Shares will be acquired for the account of the Holder for investment and not with a view to or for sale in connection with any distribution thereof.

(b) Compliance with Securities Laws. The Holder agrees that this Instrument and the Conversion Shares may not be sold or otherwise disposed of except pursuant to (i) an effective registration statement under the Securities Act covering the re-sale by the Holder of the Conversion Shares, and applicable U.S. state securities laws or pursuant to an applicable exemption from the registration requirements of the Securities Act and such U.S. state securities laws, and (ii) a prospectus filed under applicable Canadian securities laws covering the sale by the Holder of the Conversion Shares or pursuant to an applicable exemption from such Canadian securities law requirements.

(c) No Transfer to Non-Lenders. The Holder agrees that this Instrument may not be assigned, transferred or sold to any Person who is not a Lender under the Credit Agreement.

**SECTION 8. Confidentiality.** The Holder hereby agrees to comply with and be bound by, and agrees to require a transferee permitted hereby to be bound by, the confidentiality provisions in Section 11.07 of the Credit Agreement and acknowledges and agrees that (a) any information provided to the Holder or its representatives pursuant to this Instrument, (b) any other information provided to the Holder or its representatives that a reasonable person would deem to be confidential under the circumstances, and (c) any other information provided to the Holder or its representatives pursuant to this Instrument and is clearly identified at the time of delivery as confidential shall, in each case, be deemed Information (as defined in the Credit Agreement) and subject to the confidentiality provisions in Section 11.07 of the Credit Agreement.

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**SECTION 9. Covenants.** The Company hereby covenants and undertakes to the Holder that for so long as the Holder holds this Instrument, any interest created under this Instrument or any Conversion Shares:

(a) **Validly Issued Shares.** All Conversion Shares issuable upon exercise of the conversion rights under this Instrument and full conversion of the Aggregate Conversion Amount (including those issued pursuant to adjustments as required pursuant to Section 5 hereof) shall, upon delivery by the Company, be duly authorized and validly issued, fully paid and nonassessable, free from all stamp taxes, liens and charges with respect to the issue or delivery thereof and otherwise free of all other security interests, encumbrances and claims (other than security interests, encumbrances and claims to which the Holder is subject prior to or upon the issuance of the applicable Conversion Shares or pursuant to the Credit Agreement, restrictions under applicable federal, provincial, territorial and/or state securities laws and other transfer restrictions described herein).

(b) **Reservation of Shares.** The Company shall at all times reserve and keep available for issue out of the aggregate of its authorized but unissued share capital, free of preemptive rights, such number of its duly authorized Common Shares as shall be required to enable the Company to issue Conversion Shares in the full amount required upon exercise in full of the conversion rights under this Instrument. If any Common Shares reserved or to be reserved for the purpose of the exercise of the conversion rights under this Instrument, or any shares or other securities reserved or to be reserved for the purpose of issuance pursuant to Section 5 hereof, require registration with or approval of any Governmental Authority under any federal or state law (other than securities laws) before such shares or other securities may be validly delivered upon exercise of the conversion rights under this Instrument, then the Company covenants that it will, at its sole expense, promptly secure such registration or approval, as the case may be (including, but not limited to, approvals or expirations of waiting periods required under the Hart Scott Rodino Antitrust Improvements Act).

(c) **No Effect Upon Lending Relationship.** Notwithstanding anything herein to the contrary, nothing contained in this Instrument shall affect, limit or impair the rights and remedies of the Holder or any of its Affiliates in its capacity as a lender to the Company pursuant to any agreement under which the Company has borrowed money from the Holder or any of its Affiliates. Without limiting the generality of the foregoing, the Holder, for itself or in any capacity with respect to any of its Affiliates in exercising its or its Affiliates' respective rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect equity holder of the Company, (ii) the equity of the Company or (iii) any duty it may have to any other direct or indirect equity holder of the Company, except as may be required under the Credit Agreement or by commercial law applicable to creditors generally, or as may be required under applicable securities laws.

(d) **Compliance with Rule 144.** The Company shall timely file (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 of issuance set forth above pursuant to the Exchange Act. As long as the Holder owns any Conversion Securities, if the Company is not required to file reports pursuant to such securities laws, it will prepare and furnish to the Holder and make publicly available in accordance with Rule 144 such information as is required for the Holder to sell Conversion Securities under Rule 144. For so long as the Conversion Shares are not registered under an effective registration statement, the Company further covenants that it will take such further action as the Holder may reasonably request and cooperate in all respects with the Holder, including using its best efforts to provide instructions to the Transfer Agent in order to facilitate a sale or transfer of Conversion Shares, cause its legal counsel to issue a legal opinion to the Transfer Agent for such Conversion Shares if required by the Transfer Agent to effect the removal of the legend hereunder or procure the removal of any restrictive legend applicable to the Conversion Shares, all to the extent required from time to time to enable the Holder to sell such Conversion Shares without registration under the Securities Act in accordance with the requirements of the applicable exemptions provided by Rule 144, if available.

(e) **Certain Amendments.** The Company shall not adopt any amendment or modification of the Organization Documents of the Company that would adversely affect the Holder (in its capacity solely as a holder of this Instrument) without prior written consent of the Holder.

(f) Limitation on Certain Restrictions. The Company shall not, and will not permit or cause any of its Subsidiaries, directly or indirectly, to create or otherwise cause or suffer to exist or become effective any restriction or encumbrance (other than the Credit Agreement) on the ability of the Company and any such Subsidiaries to perform and comply with their respective obligations under this Instrument.

(g) Regulatory Requirements and Restrictions. In the event of any reasonable determination by the Holder that, by reason of any existing or future national, federal or state law, statute, rule, regulation, guideline, order, court or administrative ruling, request or directive (whether or not having the force of law and whether or not failure to comply therewith would be unlawful) including bank holding company related laws (collectively, a “Regulatory Requirement”), the Holder is effectively restricted or prohibited from holding this Instrument or the Conversion Shares (including any shares of capital stock or other securities distributable to the Holder in any merger, reorganization, readjustment or other reclassification), or otherwise realizing upon or receiving the benefits intended under this Instrument, the Company shall, and shall use its reasonable best efforts to take such action as the Holder and the Company shall jointly agree in good faith to be necessary to permit the Holder to comply with such Regulatory Requirement; provided, that, no action shall be required to be taken by the Company that would (i) require the Company or any of its Subsidiaries to change its line of business or effect any transactions involving the Company or any of its Subsidiaries (including, but not limited to, any corporate reorganization); (ii) materially interfere or would reasonably be expected to materially interfere with any financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company; (iii) require the Company to obtain shareholder approval; (iv) require the Company or any of its Subsidiaries to re-incorporate under the laws of any other jurisdiction or to register pursuant to the rules or regulations of any regulatory agency; or (v) result in any adverse tax consequences to the Company or any of its Subsidiaries. The reasonable costs of taking such action, whether by the Company, any of its Subsidiaries, the Holder or otherwise, shall be borne in full by the Holder.

#### **SECTION 10. Registration Rights.**

(a) As soon as reasonably possible, but in any event, no later than twelve (12) calendar months following the Commencement Date (and subject to satisfaction of the Registration Conditions), the Company shall prepare and file a shelf registration statement with the Commission to permit the public resale of the Registrable Securities (the “Registration Statement”). The Registration Statement required to be filed with the Commission pursuant to this Section 10(a) shall be on Form F-3 or Form F-10, or, if neither Form F-3 nor Form F-10 is then available to the Company, on Form F-1, Form S-3, Form S-1 or such other form of registration statement as is then available to effect a registration for resale of the Registrable Securities, covering the Registrable Securities, and shall contain a prospectus in such form as to permit any the Holder to sell the Registrable Securities pursuant to Rule 415 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect, or in the case of Form F-10, any similar provision under Canadian securities laws) at any time beginning on the effective date for such Registration Statement. The Company shall use its best efforts to cause a Registration Statement filed pursuant to this Section 10(a) to be declared effective by the Commission as soon as possible, but in any event, within one hundred twenty (120) calendar days after the filing of the Registration Statement. A Registration Statement shall provide for the resale pursuant to any method or combination of methods legally available to, and requested by, the Holder, including by way of an underwritten offering, if so elected by the Holder, subject to a minimum offering size of \$3,000,000. During the Effectiveness Period, the Company shall use its best efforts to cause a Registration Statement filed pursuant to this Section 10(a) to remain effective, and to be supplemented and amended to the extent necessary to ensure that such Registration Statement is available or, if not available, that another registration statement is available for the resale of the Registrable Securities until the Registration Termination Time. The Company shall prepare and file a listing application with the Principal Market for the Company’s Common Shares (including Nasdaq and TSX, if applicable, or such other national securities exchange on which the Company’s Common Shares are then listed and traded, in each case, to the extent required by the rules and regulations of such exchange) to list all Conversion Shares issuable upon exercise of the conversion rights under this Instrument covered by a Registration Statement and shall have such Conversion Shares issuable upon exercise of the conversion rights under this Instrument promptly approved for listing on such Principal Market (including Nasdaq and TSX, if applicable, or such other national securities exchange on which the Common Shares are then listed and traded, in each case, to the extent required by the rules and regulations of such exchange) by the effective date of such Registration Statement, subject only to official notice of issuance. Within two (2) Business Days of the effective date of a Registration Statement, the Company shall notify the Holder of the effectiveness of such Registration Statement.

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(b) When effective, a Registration Statement (including the documents incorporated therein by reference) shall comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any prospectus contained in such Registration Statement, in the light of the circumstances under which a statement is made).

(c) Without limiting Section 10(a), the Company agrees that it shall notify the Holder in writing at least five (5) Business Days prior to the filing of any registration statement under the Securities Act for purposes of a proposed public offering of Common Shares (including, without limitation, registration statements relating to secondary offerings of securities of the Company, but excluding (i) any registration statement relating to any employee benefit plan; (ii) with respect to any corporate reorganization or transaction under Rule 145 promulgated under the Securities Act, any registration statement related solely to the issuance or resale of securities issued in such a transaction; (iii) any registration statement related solely to Common Shares issued upon conversion of convertible debt securities; (iv) any registration statement filed under Rule 462(b) promulgated under the Securities Act; or (v) any registration statement on Form S-4, Form F-4 or Form S-8 not contemplated by clauses (i) through (iv) hereof) that would be filed at any time during which this Instrument is still outstanding and the Holder (together with the Holder's Affiliates who are holders of the other conversion instruments forming the same series with this Instrument) continues to hold or beneficially own Registrable Securities that comprise at least one percent (1%) of the Common Shares then outstanding, and the Company will afford the Holder an opportunity to include in such registration statement all or part of the Registrable Securities, subject to the provisions hereof (such registration statement, the "Piggyback Registration Statement"). If the Holder desires to include in any such Piggyback Registration Statement all or any part of the Registrable Securities held by it, the Holder shall, within three (3) Business Days after the above-described notice from the Company, so notify the Company in writing and shall thereafter furnish the Company with such information as the Company reasonably requires to include such Registrable Securities in such offering; provided that, if such Registrable Securities represent Conversion Shares that have not yet been issued upon exercise of this Instrument, then the Holder shall also include a Notice of Conversion in respect of such Registrable Securities, it being understood that in no event shall the Company be obligated to include in any such Piggyback Registration Statement any Conversion Shares that have not been, or will not be, actually issued prior to the closing of the applicable offering due solely to the Holder's failure to timely deliver such Notice of Conversion to the Company. The Company will use its commercially reasonable efforts to cause such Registrable Securities as to which inclusion shall have been so requested to be included in the Piggyback Registration Statement, subject to the second proviso in the next sentence. The Holder shall be entitled to sell the Registrable Securities included in a Piggyback Registration Statement in accordance with the method of distribution contemplated in the Piggyback Registration Statement; provided that, if the Piggyback Registration Statement relates to an underwritten offering, then (A) the Company shall be entitled to select the underwriters in its sole discretion and (B) the Holder must sell all Registrable Securities included on the Piggyback Registration Statement in such underwritten offering pursuant to an underwriting agreement containing terms and conditions that are customary for secondary offerings; and provided, further, that if the number of Registrable Securities requested by the Holder, together with the number of Common Shares that other persons that have duly requested to be included in such Piggyback Registration Statement pursuant to "piggyback rights" evidenced by another agreement (including, without limitation, the Existing Registration Rights Agreement) (collectively, "Requested Shares"), exceeds the maximum number of securities that may be sold in the applicable offering under such Piggyback Registration Statement without adversely affecting the success of such offering, as advised by the managing underwriters for such offering, then the number of Requested Shares to be included in such Piggyback Registration Statement will be allocated first, to such other persons party to the Existing Registration Rights Agreement; second, to the Holder; and third, to any other such persons. The Company may withdraw a Piggyback Registration Statement prior to its being declared effective without incurring any liability to the Holder and shall not be required to keep a Piggyback Registration Statement effective for longer than the period contemplated by the intended manner of distribution for the securities of the Company to be sold by the Company as described in the prospectus included in the Piggyback Registration Statement.

(d) For the avoidance of doubt, the rights to cause the Company to register Registrable Securities granted to the Holder by the Company under this Section 10 shall be fully assignable and transferrable to the same extent as this Instrument and the Conversion Shares are assignable and transferrable pursuant to Section 7 hereof, and any assignee or transferee of any Conversion Securities shall have all of the rights of the Holder to cause the Company to register Registrable Securities as set forth in this Section 10.

(e) The Holder (or any assignee or transferee) shall cooperate with the Company by, with reasonable promptness, supplying information and executing documents relating to such Holder (or transferee or assignee) or the securities of the Company owned by such Holder (or transferee or assignee) in connection with such registration under this Section 10 which are customary for offerings of this type or are required by applicable laws or regulations, including, but not limited to, furnishing to the Company a completed questionnaire in the form attached to this Instrument as Exhibit C. In the event the Holder does not comply with the immediately preceding sentence within a reasonable time prior to the initial filing in connection with such registration, the Company shall be permitted to exclude the Holder as a selling securityholder in connection therewith. In addition, the right of the Holder to include any of its Registrable Securities in any underwritten offering pursuant to a Piggyback Registration Statement will be subject to the execution and delivery by such Holder or its duly authorized representative or attorney-in-fact, of any related underwriting agreement and such other agreements or instruments (including customary "lock-up" agreements, custody agreements and powers of attorney), if any, as may be reasonably requested (to the same extent any such request is also made to the Company's directors or officers and/or other selling shareholders in such offering) by the managing underwriters for such offering.

(f) Notwithstanding the foregoing provisions of this Section 10, the Company may, at any time, (i) delay the filing or delay or suspend the effectiveness of a Registration Statement, Piggyback Registration Statement or any pending or potential offering thereunder; (ii) without suspending such effectiveness, instruct the Holder not to sell any securities included in a Registration Statement or Piggyback Registration Statement; or (iii) delay the filing of any amendment or supplement to any Registration Statement or Piggyback Registration Statement, if, in the case of any of clause (i), (ii) or (iii), the Board has determined and promptly delivers a notice (a "Suspension Notice") to the Holder in writing that in its reasonable good faith judgment (A) a material event has occurred or is likely to occur with respect to the Company that has not been publicly disclosed and, if disclosed, could reasonably be expected to materially and adversely affect the Company and its ability to consummate the registration of the resale of the Registrable Securities or (B) such registration could reasonably be expected to materially interfere with any material financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company (a "Suspension Period"), by providing the Holder with written notice of such Suspension Period and the reasons therefor. The Company will use its reasonable best efforts to provide such Suspension Notice at least ten (10) Business Days prior to the commencement of such a Suspension Period; provided, however, that in any event the Company will provide such notice no later than the commencement of such Suspension Period; provided, further, that in no event will a Suspension Period exceed thirty (30) days and in no event shall the total number of days subject to a Suspension Period during any consecutive twelve (12) month period exceed forty-five (45) days. Any Suspension Period will not be deemed to have ended until the Holder has received a notice from the Company stating that such Suspension Period has ended. The Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a Suspension Notice from the Company, such Holder will forthwith discontinue any offers and sales of such Registrable Securities under a Registration Statement or a Piggyback Registration Statement until such Holder's receipt of the copies of the applicable supplemented prospectus and/or amended registration statement or until it is advised in writing by the Company that the use of the prospectus under the applicable Registration Statement or Piggyback Registration Statement, as applicable, may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such prospectus or amended registration statement. The Company and the Holder acknowledge and agree that in no way shall this Section 10(f) limit the Holder's ability to sell securities without using a Registration Statement or a Piggyback Registration Statement.

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(g) The Company shall pay all reasonable Registration Expenses.

**SECTION 11. Representations and Warranties of the Company.** The Company hereby represents and warrants to the Holder as of the Commencement Date, that:

(a) The Company (i) is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, (ii) has the requisite power and authority to execute, deliver and perform its obligations under this Instrument, and (iii) is duly qualified and is licensed and in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license.

(b) The Board has been generally and unconditionally authorized and empowered to execute this Instrument, and allot and issue the Conversion Shares in accordance with the Organization Documents of the Company and the terms of this Instrument, and that execution, delivery and performance by the Company of this Instrument has been duly authorized by all necessary corporate or other organizational action, and does not (i) contravene the terms of any of the Organization Documents of the Company or any Subsidiary, or (ii) conflict with or result in any breach or contravention of, or the creation of any Lien (as defined in the Credit Agreement) under, or require any payment to be made under (A) any Contractual Obligation (as defined in the Credit Agreement) to which the Company or any of its Subsidiaries is a party or affecting such Person or the properties of the Company or any of its Subsidiaries or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which the Company or any of its Subsidiaries or their property is subject.

(c) No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the Company of this Instrument other than those that have already been obtained and are in full force and effect. No shareholder or equityholder approvals are required under the Organization Documents of the Company or any of its Subsidiaries, any instrument or agreement to which the Company or any of its Subsidiaries is a party, or under the rules of the Principal Market on which the Common Shares are traded (including Nasdaq and TSX, if applicable) in connection with the issuance of this Instrument or the Conversion Shares issuable upon exercise of the conversion rights under this Instrument.

(d) Neither the Company nor any of its Subsidiaries is insolvent or bankrupt or unable to pay its debts as they fall due and neither the Company nor any of its Subsidiaries has stopped or suspended payment of its debts or indicated its intention to do so, nor has any analogous procedure or step been taken or proposed in any jurisdiction in relation to the Company or any of its Subsidiaries, nor has the Company or any of its Subsidiaries commenced negotiations with one or more of its creditors with a view to rescheduling or restructuring any of its indebtedness. No steps have been taken or proposed for the winding-up, bankruptcy, administration, examinership, insolvency, dissolution or reorganization of the Company or any of its Subsidiaries.

(e) This Instrument has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally; (ii) general principles of equity, regardless of whether considered in a proceeding in equity or at law; and (iii) public policy considerations.

(f) The Conversion Shares have been duly and validly authorized and reserved for issuance by the Company and, when issued upon exercise of the conversion rights under this Instrument in accordance with its terms, will be fully paid and nonassessable, and the issuance of the Conversion Shares, if any, will not be subject to any statutory or contractual preemptive right, right of first refusal or other similar rights; the Conversion Shares when issued and delivered against payment therefor as provided for in this Instrument will be free of any restriction upon the voting or transfer thereof pursuant to the Company' s Organization Documents or any agreement or other instrument to which the Company or any of its Subsidiaries is a party other than the restrictions on ownership and transfer set forth in the Company' s Organization Documents, if any, and applicable securities laws.



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(g) The Conversion Shares issuable upon exercise of the conversion rights under this Instrument will conform, in all material respects to the descriptions thereof contained in the reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act, the Exchange Act and applicable Canadian securities laws (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the “Public Filings”) and the Organization Documents of the Company. Except as disclosed in the Public Filings, there are no persons with registration or other similar rights to have any equity or debt securities, including securities which are convertible into or exchangeable for equity securities, registered pursuant to any registration statement or otherwise registered by the Company or any of its Subsidiaries under the Securities Act or applicable Canadian securities laws, all of which registration or similar rights are fairly summarized in the Public Filings.

(h) Assuming the accuracy of the representations made by the Holder herein as of the Commencement Date and as of the date of any exercise of such Holder’s conversion rights under this Instrument, as applicable, the offer and sale by the Company of this Instrument to the Holder and the Conversion Shares issuable upon exercise by the Holder of the conversion rights under this Instrument are not required to be registered pursuant to the provisions of Section 5 of the Securities Act, and the first trade in the Conversion Shares issuable upon exercise by the Holder of the conversion rights under this Instrument is exempt from the prospectus requirements of applicable Canadian securities laws, provided that the trade is not a “control distribution” (as such term is defined in National Instrument 45-102 – Resale of Securities).

**SECTION 12. Representations and Warranties of the Holder.** The Holder hereby represents and warrants to the Company as of the Commencement Date and on each date that any Notice of Conversion is delivered to the Company that the Holder (a) is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, (b) is aware that the prospective investment in this Instrument and the Conversion Shares issuable upon exercise of the conversion rights under this Instrument, may involve a high degree of risk, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of such investment, (c) can bear the economic risks of its investment in this Instrument and the Conversion Shares issuable upon conversion hereunder, and (d) has had (i) access to representatives of the Company during the course of this transaction, prior to the creation of this Instrument and, if applicable, prior to the exercise of the conversion rights under this Instrument, (ii) the opportunity to ask questions of and receive answers from the Company and its representatives concerning the terms and conditions of this Instrument and the Conversion Shares, and (iii) the opportunity to obtain any additional information necessary to verify the information related to this Instrument, the Conversion Shares or otherwise to the business and proposed activities of the Company. In addition, the Holder is acquiring this Instrument, and any Conversion Shares issuable upon exercise of the conversion rights hereunder, solely for its own account, and such Instrument is being and will be acquired by such Holder solely for the purpose of investment and not with a view to resale of this Instrument (or any Conversion Shares issuable upon conversion hereunder) in connection with a distribution thereof in violation of the Securities Act. The Holder understands and acknowledges that this Instrument, and any Conversion Shares issuable upon conversion hereunder, may not be transferred or sold except pursuant to (A) the registration or qualification provisions of applicable securities laws or pursuant to an available exemption therefrom and (B) the terms of this Instrument. The Holder is not a resident of Canada and is investing in this Instrument as principal for its own account, not for the benefit of any other person, for investment only and not with a view to the resale or distribution of all or any of this Instrument or the Conversion Shares. Nothing in this Instrument shall be construed as conferring upon the Holder any right or interest whatsoever as a shareholder of the Company.

**SECTION 13. Definitions.**

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As used herein, in addition to the terms defined elsewhere herein, the following terms shall have the following meanings.

“\$” means lawful money of the United States.

“30-Day VWAP” means, as of any date, the volume weighted average trading price per Common Share, or any successor security thereto (rounded to the nearest second decimal place) on the Principal Market (as reported by Bloomberg L.P. (or its successor) or if not available, by Dow Jones & Company Inc., or if neither is available, by another authoritative source mutually agreed by the Company and the Holder) from 9:30 a.m. (New York City time) on the Trading Day that is thirty (30) Trading Days preceding such date to 4:00 p.m. (New York City time) on the last Trading Day immediately preceding such date.

“Administrative Agent” means Madryn Fund Administration, LLC, in its capacity as administrative agent under any of the Credit Agreement.

“Affiliate” has the meaning provided in the Credit Agreement.

“Aggregate Conversion Amount” means the aggregate amount of the Outstanding Amount of the Loans owing to the Holder under the Credit Agreement, up to the Maximum Conversion Amount then available, that the Holder elects to convert into Conversion Shares as indicated by the Holder in the Notice of Conversion; provided that, in the case of an Automatic Exercise, the “Aggregate Conversion Amount” means the Maximum Conversion Amount then available.

“Alternate Consideration” has the meaning set forth in Section 5(b).

“Automatic Exercise” has the meaning set forth in Section 2(i).

“Board” means the board of directors of the Company.

“Business Day” has the meaning provided in the Credit Agreement.

“Cash Settlement Amount” has the meaning set forth in Section 2(d)(ii).

“Cash Settlement Date” has the meaning set forth in Section 2(d)(iii).

“Commencement Date” has the meaning set forth in the Preamble.

“Commission” means the United States Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act or the Exchange Act.

“Common Shares” has the meaning set forth in the Preamble.

“Company” has the meaning set forth in the Preamble.

“Conversion Price” has the meaning set forth in the Preamble.

“Conversion Securities” means this Instrument or any Conversion Shares issuable upon exercise of the conversion rights under this Instrument, in whole or in part.

“Conversion Shares” means (a) the Common Shares issued or issuable upon exercise of the conversion rights under this Instrument in accordance with its terms and (b) all other Equity Interests of the Company issued with respect to such Common Shares by way of stock dividends, split, conversions or other reclassification or in connection with any Fundamental Transaction, recapitalization or other reorganization affecting the Company’s Equity Interests.

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“Credit Agreement” has the meaning set forth in the Preamble.

“Day 1 U.S. Federal Withholding Taxes” shall mean U.S. federal withholding taxes imposed on amounts payable to or for the account of a Holder with respect to an interest in the Instrument pursuant to a law in effect on the date on which (i) such Holder acquires such interest in the Instrument (other than pursuant to an assignment request by the Borrower pursuant to Section 11.13 of the Credit Agreement) or (ii) such Holder changes its Lending Office (as defined in the Credit Agreement), except in each case to the extent that, pursuant to Section 3.01 of the Credit Agreement, amounts with respect to such taxes were payable either to the Holder’s assignor immediately before such Holder became a party hereto or to such Holder immediately before it changed its Lending Office (as defined in the Credit Agreement).

“Distributed Property” has the meaning set for in Section 5(a)(ii).

“Effectiveness Period” means the period beginning on the effective date for the Registration Statement and ending at the Registration Termination Time.

“Equity Interests” has the meaning provided in the Credit Agreement.

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

“Existing Registration Rights Agreement” means the Resale Registration Rights Agreement, dated June 14, 2021, by and among the Company and 1315 Capital II, L.P., Greybrook Health Inc., Marlin Fund, Limited Partnership, Marlin Fund II, Limited Partnership, MSS GB SPV LP and the other purchasers from time to time party thereto.

“Expiration Date” means the earlier to occur of (a) the Maturity Date (as defined in the Credit Agreement) and (b) the date as of which (i) all of the Commitments (as defined in the Credit Agreement) of the Holder, as a Lender under the Credit Agreement, have been terminated and (ii) all Obligations owing to the Holder, as a Lender under the Credit Agreement, have been paid in full in cash or upon earlier conversion of all or a portion of this Instrument (other than contingent indemnification obligations for which no claim has been asserted).

“Fair Market Value” means, with respect to any security or other property, the fair market value of such security or other property as determined by the Board, acting reasonably, in good faith and evidenced by a written notice delivered promptly to the Holder (which written notice shall include certified resolutions of the Board in respect thereof). If the Holder objects in writing to the Board of Directors’ calculation of fair market value within ten (10) Business Days after receipt of written notice thereof, and the Holder and the Company are unable to agree on the fair market value during the ten (10) day period following the delivery of the Holder’s objection, then the Fair Market Value shall be determined by a disinterested appraiser (which may be a national investment bank or national accounting firm) mutually selected by the Company and the Holder, the fees and expenses of which shall be paid by the Company. Any selection of a disinterested appraiser shall be made in good faith within three (3) Business Days after the Holder provides written notice to the Company of its objection to the determination of the Fair Market Value and any determination of Fair Market Value by a disinterested appraiser shall be made within fifteen (15) days of the date of selection. For the avoidance of doubt, the Fair Market Value of cash shall be the amount of such cash.

“Fair Market Value Per Common Share” of one Common Share means as of any particular day (a) at the option of the Holder, either (i) the last reported sale price on the Nasdaq Capital Market and, if there are no sales, the last reported bid price, of the Common Shares on the Business Day prior to such date on the Principal Market on which the Common Shares are then listed or quoted as reported by Bloomberg Financial Markets or (ii) 30-Day VWAP as of such date, or (b) if the Fair Market Value Per Common Share cannot be calculated as of such date on the foregoing basis, the price determined in good faith by the Board, acting reasonably and in consultation with the Holder. Notwithstanding the foregoing if the determination of Fair Market Value Per Common Share is in connection with any Fundamental Transaction, then the Fair Market Value Per Common Share shall be the value per Conversion Share to be realized in such pending transaction.

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“Fundamental Transaction” means (a) any merger, amalgamation, arrangement, consolidation or similar transaction of the Company with or into another Person, (b)(i) a sale, lease, license, transfer, exchange or other disposition of all or substantially all the assets of the Company and its Subsidiaries on a consolidated basis or (ii) any license, sublicense or similar grant of rights, or series of such licenses or grants, with respect to any assets, including intellectual property assets, of the Company or any of its Subsidiaries which are material to the Company and its Subsidiaries on a consolidated basis to any Person or group of Persons other than a Subsidiary of the Company, (c) any reclassification of the Common Shares (other than a change to par value, or from par value to no par value or changes resulting from a combination or subdivision), or (d) any statutory exchange of the outstanding Common Shares, as a result of which, the holders of the Common Shares would be entitled to receive, or their Common Shares would be converted into, or exchanged for, other shares, other stock, other securities, or other property or assets (including cash or any combination thereof).

“Governmental Authority” has the meaning provided in the Credit Agreement.

“Holder” has the meaning set forth in the Preamble.

“Instrument” has the meaning set forth in the Preamble.

“Lender” has the meaning provided in the Credit Agreement.

“Loan” has the meaning provided in the Credit Agreement.

“Maximum Conversion Amount” means, (a) if, at the time of the exercise of the conversion rights under this Instrument, there is at least \$4,307,056.45 of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement as of such date, \$4,307,056.45, or, (b) if, at the time of exercise of the conversion rights under this Instrument, there is less than \$4,307,056.45 of the Outstanding Amount of Loans owing to the Holder under the Credit Agreement, the entire Outstanding Amount of Loans owing to the Holder at such time under the Credit Agreement.

“Nasdaq” has the meaning set forth in Section 2(d)(i).

“Net Exercise” has the meaning set forth in Section 2(c).

“Non-Share Settled Portion” has the meaning set forth in Section 2(d)(i).

“Notice of Conversion” has the meaning set forth in Section 2(a).

“Organization Documents” has the meaning provided in the Credit Agreement.

“Outstanding Amount” has the meaning provided in the Credit Agreement.

“Person” has the meaning provided in the Credit Agreement.

“Piggyback Registration Statement” has the meaning set forth in Section 10(c).

“Principal Market” initially means the Nasdaq Capital Market and any successor thereto that qualifies as a national securities exchange, inter-dealer quotation system or over-the-counter market, and shall also include the Nasdaq Global Market, the Nasdaq Global Select Market, New York Stock Exchange, Inc., the NYSE American or the OTC Bulletin Board, whichever is at the time the principal exchange or market for the Common Shares, based upon daily share volume.

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“Principal Office” means the Company’s principal office as set forth in Section 19 hereof or such other principal office of the Company in the United States of America the address of which shall have first been set forth in a notice to the Holder.

“Public Filings” has the meaning set forth in Section 11(g).

“Registrable Securities” means the Conversion Shares issuable upon exercise of the conversion rights under this Instrument.

“Registration Conditions” means (a) the Common Shares are listed on a Trading Market in the United States; and (B) the Company shall have received (or caused to be prepared) audited financial statements of Check Five LLC, a Delaware limited liability company (d/b/a Success TMS), to the extent such audited financial statements are required by applicable U.S. securities laws, rules and regulations (including, but not limited to, Rule 3-05 of Regulation S-X under the Securities Act) for the filing of the Registration Statement.

“Registration Expenses” means all expenses incident to the Company’s performance under or compliance with Section 10 of this Instrument to effect the registration of Registrable Securities on a Registration Statement or a Piggyback Registration Statement pursuant to Section 10 hereof or an underwritten offering, and the disposition of such Registrable Securities, including, without limitation, all registration, filing, securities exchange listing and fees required to be paid to the Principal Market for the Company’s Common Shares, all registration, filing, qualification and other fees and expenses of complying with securities or blue sky laws, fees of the Financial Industry Regulatory Authority, Inc., fees of transfer agents and registrars, all word processing, duplicating and printing expenses, any transfer taxes, and the fees and disbursements of counsel and independent public accountants for the Company, including the expenses of any special audits or “comfort” letters required by or incident to such performance and compliance, and the reasonable fees and disbursements of one counsel for the Holder participating in such Registration Statement, Piggyback Registration Statement or underwritten offering thereunder to effect the disposition of such Registrable Securities, selected by the Holder, subject to the reasonable consent of the Company; provided, that, if holders of registrable securities under the Existing Registration Rights Agreement are also participating in any such Piggyback Registration Statement or underwritten offering thereunder, then the counsel for such other holders shall be designated as the counsel for the Holder in connection therewith, except unless the Holder reasonably objects to such counsel (including, without limitation, by reasons of any conflict of interest).

“Registration Statement” has the meaning set forth in Section 10(a).

“Registration Termination Time” means the earliest to occur of the following: (a) when a registration statement covering Registrable Securities becomes or has been declared effective by the Commission and all such Registrable Securities have been sold or disposed of pursuant to such effective registration statement; (b) when all Registrable Securities have been sold or disposed of (excluding transfers or assignments by the Holder to an Affiliate pursuant to Rule 144 under the Securities Act (or any successor or similar provision adopted by the Commission then in effect) under circumstances in which all of the applicable conditions of Rule 144 (as then in effect) are met; (c) when all Registrable Securities are held by the Company or one of its direct or indirect Subsidiaries; or (d) if the Holder beneficially owns less than one percent (1%) of outstanding Common Shares.

“Regulatory Requirement” has the meaning set forth in Section 9(g).

“Requested Shares” has the meaning set forth in Section 10(c).

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

“Share Combination” has the meaning set forth in Section 5(a)(i)(C).

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“Share Delivery Date” has the meaning set forth in Exhibit B.

“Share Distribution” has the meaning set forth in Section 5(a)(i)(A).

“Share Subdivision” has the meaning set forth in Section 5(a)(i)(B).

“Subsidiary” has the meaning provided in the Credit Agreement.

“Suspension Notice” has the meaning set forth in Section 10(f).

“Suspension Period” has the meaning set forth in Section 10(f).

“Trading Day” means, as applicable, (a) with respect to all price or trading volume determinations relating to the Common Shares, any day on which the Common Shares is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Shares, then on the principal securities exchange or securities market on which the Common Shares is then traded; **provided** that “Trading Day” shall not include any day on which the Common Shares is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Shares is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00 p.m., New York City time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Shares, any day on which Nasdaq (or any successor thereto) is open for trading of securities.

“Trading Market” means whichever of the Toronto Stock Exchange, NYSE American, New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Capital Market, Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Shares are listed or quoted for trading on the date in question.

“Transfer Agent” means the Company’s designated transfer agent, as it may be changed from time to time.

“TSX” has the meaning set forth in Section 2(d)(i).

**SECTION 14. Survival of Provisions.** Upon the earlier of (a) the full exercise of the conversion rights under this Instrument and (b) the occurrence of the Expiration Date, as applicable, all of the provisions of this Instrument shall terminate, except that the provisions of Section 9, Section 10 and Section 13 through Section 27 of this Instrument shall expressly survive such exercise or Expiration Date until such time as the Holder no longer holds any Conversion Shares.

**SECTION 15. Equitable Relief.** Each of the Company and the Holder acknowledges that a breach by such party of any of its obligations under this Instrument would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief without posting bond or other security.

**SECTION 16. Waivers, Delays, Omissions and Indulgences.** It is agreed that no waivers, delay or omission to exercise any right, power or remedy accruing to the Holder upon any breach or default of the Company under this Instrument shall impair any such right, power or remedy, nor, unless explicitly stated in writing, shall it be construed to be a waiver of any such breach or default, or any acquiescence therein, or of or in any similar breach or default thereafter occurring; nor, unless explicitly stated in writing, shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the Holder’s part of any breach or default under this Instrument, or any waiver on the Holder’s part of any provisions or conditions of this Instrument must be in writing and that all remedies, either under this Instrument, or by law or otherwise afforded to the Holder, shall be cumulative and not alternative.

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**SECTION 17. Rights of Transferees.** Subject to Section 7, the rights granted to the Holder hereunder of this Instrument shall pass to and inure to the benefit of all subsequent transferees of all or any portion of this Instrument (provided that the Holder and any transferee shall hold such rights in proportion to their respective ownership of this Instrument and the Conversion Shares) until extinguished pursuant to the terms hereof.

**SECTION 18. Captions.** The titles and captions of the Sections and other provisions of this Instrument are for convenience of reference only and are not to be considered in construing this Instrument.

**SECTION 19. Notices.** All notices, demands and other communications provided for or permitted hereunder shall be made in writing and shall be by registered or certified first-class mail, return receipt requested, e-mail, overnight courier service or personal delivery:

(a) if to the Company:

Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4  
Attention: Erns Loubser, Chief Financial Officer  
Phone No.: (416) 322-9700 x548  
Email: [eloubser@greenbrooktms.com](mailto:eloubser@greenbrooktms.com)

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

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, NY 10036-7703  
Attention: Christopher R. Bornhorst; Robbie Leibel  
Phone No.: (212) 880-6047; (416) 865-8201  
Email: [cbornhorst@torys.com](mailto:cbornhorst@torys.com); [rleibel@torys.com](mailto:rleibel@torys.com)

(b) if to the Holder:

Madryn Health Partners II (Cayman Master), LP

c/o Madryn Asset Management, LP  
330 Madison Avenue, 33<sup>rd</sup> Floor  
New York, NY 10017  
Attention: Avinash Amin  
Phone No.: (646) 560-5490  
Email: [aamin@madrynlp.com](mailto:aamin@madrynlp.com)

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

Moore & Van Allen PLLC  
100 North Tryon Street  
Suite 4700  
Charlotte, NC 28202  
Attention: Tripp Monroe; Sonny Ha  
Phone No.: 704.331.1107; 704.331.3595  
Email: [trippmonroe@mvalaw.com](mailto:trippmonroe@mvalaw.com); [sonnyha@mvalaw.com](mailto:sonnyha@mvalaw.com)

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All such notices and communications shall be deemed to have been duly given: (i) when delivered by hand, if personally delivered; (ii) when delivered by courier, if delivered by commercial overnight courier service; (iii) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; and (iv) upon actual receipt if given by electronic mail and such receipt is confirmed in writing by the recipient or is verified by electronic means.

**SECTION 20. Successors and Assigns.** This Instrument shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that the Company shall have no right to assign its rights, or to delegate its obligations, hereunder without the prior written consent of the Holder, and any such assignment or delegation by the Company without the prior written consent of the Holder shall be null and void.

**SECTION 21. Amendments.** Neither this Instrument nor any term hereof may be amended, changed, waived, discharged or terminated without the prior written consent of the Holder and the Company to such action.

**SECTION 22. Severability.** If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

**SECTION 23. Governing Law; Jurisdiction; Etc.**

(a) GOVERNING LAW. THIS INSTRUMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS INSTRUMENT OR THE ISSUANCE OF CONVERSION SHARES UPON EXERCISE OF THE CONVERSION RIGHTS UNDER THIS INSTRUMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE COMPANY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE HOLDER IN ANY WAY RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, IN ANY OTHER FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK AND ANY UNITED STATES DISTRICT COURT IN THE STATE OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF LOCATED IN NEW YORK COUNTY, NEW YORK, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. THE COMPANY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS INSTRUMENT SHALL AFFECT ANY RIGHT THAT THE HOLDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, AGAINST THE COMPANY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.



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(c) **WAIVER OF VENUE.** THE COMPANY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS RELATING HERETO, IN ANY COURT REFERRED TO IN SECTION 23(B). EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 19. NOTHING IN THIS INSTRUMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**SECTION 24. WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE CONVERSION SECURITIES, OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS INSTRUMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**SECTION 25. Entire Agreement.** This Instrument and the Credit Agreement constitute a single integrated contract, which for greater certainty, provides that the terms of the Loans confer on the Holder of the Outstanding Amount of Loans the conversion rights set out in this Instrument, and are intended by the parties as a final expression of the agreement of the parties hereto and are intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein.

**SECTION 26. Counterparts; Manner of Delivery.** This Instrument may be executed in two 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, Uniform Electronic Transactions Act or other applicable law) 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.

**SECTION 27. Rules of Construction.** Unless the context otherwise requires “or” is not exclusive, and, unless otherwise specified, references to sections or subsections refer to sections or subsections of this Instrument. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require.

[Remainder of Page Intentionally Omitted.]

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**IN WITNESS WHEREOF**, the Company has caused this Instrument to be issued and executed in its corporate name by its duly authorized officers as of the date first written above.

**GREENBROOK TMS INC.**

By: /s/ Bill Leonard  
Name: Bill Leonard  
Title: President and Chief Executive Officer

[Signature Page to Common Share Conversion Instrument]

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**ACKNOWLEDGED AND AGREED TO AS OF THE  
DATE FIRST WRITTEN ABOVE:**

**HOLDER:**

**MADRYN HEALTH PARTNERS II (CAYMAN  
MASTER), LP**

By: MADRYN HEALTH ADVISORS II, LP,  
its general partner

By: MADRYN HEALTH ADVISORS GP II,  
LLC,  
its general partner

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Managing Member

**ADMINISTRATIVE AGENT:**

**MADRYN FUND ADMINISTRATION, LLC**

By: MADRYN ASSET MANAGEMENT, LP,  
its managing partner

By: MADRYN ASSET MANAGEMENT GP,  
LLC,  
its general partner

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Sole Member

[Signature Page to Common Share Conversion Instrument]

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EXHIBIT A  
NOTICE OF CONVERSION

To: Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4

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

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, NY 10036-7703

Madryn Fund Administration, LLC, as Administrative Agent  
c/o Madryn Asset Management, LP  
330 Madison Avenue, 33rd Floor  
New York, NY 10017

1. The undersigned, pursuant to the provisions of the attached Instrument, hereby elects to exercise its conversion rights under such Instrument with respect to \$ \_\_\_\_\_ (the "Aggregate Conversion Amount") of the Outstanding Amount of the Loans owing to the undersigned under the Credit Agreement and hereby directs the Company to allot and issue \_\_\_\_\_ Conversion Shares to it. Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Instrument.

2. The undersigned herewith:

acknowledges and agrees that as payment in respect of the subscription price for such Conversion Shares, simultaneously with the allotment and issuance of the number of Conversion Shares specified above, the Aggregate Conversion Amount will be deemed repaid in accordance with Section 2.14 of the Credit Agreement; or

tenders payment in respect of the subscription price for such Conversion Shares by Net Exercise as provided in Section 2(c) of the attached Instrument.

3. Please allot and issue the Conversion Shares issuable in respect hereof under the terms of the attached Instrument, as follows:

\_\_\_\_\_  
(Name of Record Holder/Transferee)

The address of the holder of such Conversion Shares for inclusion in the books and register of shareholders of the Company is as follows:

\_\_\_\_\_  
(Address of Record Holder/Transferee)

4. The undersigned represents that the aforesaid Conversion Shares are being subscribed for the account of the undersigned for investment and not with a view to, or for resale in connection with, the distribution thereof and that the undersigned has no present intention of distributing or reselling such Conversion Shares. The undersigned further re-confirms each of the other representations and warranties provided by it in the attached Instrument.

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5. If the Aggregate Conversion Amount is less than the Maximum Conversion Amount then available that may be converted into Conversion Shares under the Instrument, please issue a new conversion instrument representing the remaining balance available for subsequent conversion into Conversion Shares, being an amount equal to (a) the Maximum Conversion Amount available immediately prior to the exercise of the conversion rights hereby, minus (b) the Aggregate Conversion Amount, as follows:

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(Name of Record Holder/Transferee)

and deliver such new conversion instrument to the following address:

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(Address of Record Holder/Transferee)

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(Signature)

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(Date)

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EXHIBIT B  
PROCEDURES FOR ISSUANCE OF CONVERSION SHARES UPON EXERCISE

The procedures, rights and obligations set forth in this Exhibit B shall apply to the issuance and settlement of Conversion Shares pursuant to any Notice of Conversion delivered by the Holder or any Automatic Exercise, as applicable, pursuant to the attached Instrument, unless the Cash Settlement Amount is paid or proposed to be paid in accordance with Section 2(d) of the attached Instrument. Capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the attached Instrument.

(a) (x) Unless otherwise designated by the Holder in the applicable Notice of Conversion, on or before the fifth (5<sup>th</sup>) Trading Day following the date on which the Company has received such Notice of Conversion; provided, that, such date shall be extended by up to five (5) Trading Days in the event the Company is required to adjust the Conversion Price in accordance with Section 5 of the attached Instrument, or (y) following any Automatic Exercise, on the Expiration Date (as applicable, the "Share Delivery Date"), the Company shall:

(i) if (A) there is an effective registration statement filed pursuant to the Securities Act covering the resale of such Conversion Shares by the Holder and (B) it is not otherwise deemed necessary under applicable securities laws for a restrictive legend to be affixed on such Conversion Shares upon issuance to the Holder, and, in each case, the Transfer Agent is participating in The Depository Trust Company's ("DTC") Fast Automated Securities Transfer Program ("FAST"), upon the request of the Holder, credit such aggregate number of Conversion Shares to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system; or

(ii) if (A) there is no effective registration statement filed pursuant to the Securities Act covering the resale of such Conversion Shares by the Holder, (B) it is deemed necessary under applicable securities laws for a restrictive legend to be affixed on such Conversion Shares upon issuance to the Holder, and/or (C) if the Transfer Agent is not then participating in the DTC's FAST, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Notice of Conversion (or, in the case of an Automatic Exercise, to any address specified by the Holder in writing), a Direct Registration System statement, registered in the name of the Holder or its designee, for the number of Conversion Shares to which the Holder shall be entitled pursuant to such exercise, and if applicable, including a restrictive legend thereon.

If any restrictive legend is placed on Conversion Shares, the Company agrees that, as promptly as practicable following the Legend Removal Date (as defined below) in respect of such Conversion Shares, it will, subject to receipt of such representations and covenants of the Holder and the Holder's executing broker, if any, as the Company or the Transfer Agent may reasonably require in connection therewith, deliver or cause to be delivered to the Holder a book entry position representing such Conversion Shares that is free from any restrictive legend (and the Company shall cause to be issued any legal opinion required by the Transfer Agent with respect thereto). The Company shall not make any notation on its records or give instructions to the Transfer Agent that enlarge the restrictions on transfer set forth in this section, except as may be required under applicable securities laws. To the extent that book entry positions are issued representing the Conversion Shares, such book entry positions subject to legend removal hereunder shall be delivered by the Transfer Agent to the Holder by issuing to the Holder by electronic delivery at the applicable balance account at DTC, the Transfer Agent or any custodian of the Holder, as applicable, at the Holder's election. Any fees (with respect to the Transfer Agent, the Company's counsel or otherwise) associated with the issuance of such opinion or the removal of such legend shall be borne by the Company. "Legend Removal Date", in respect of any Conversion Shares, means the earliest of the date that (A) the

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Company has received appropriate notice from the Holder that such Conversion Shares have been or are being sold or transferred pursuant to an effective registration statement under the Securities Act, (B) the Company has received appropriate notice from the Holder that such Conversion Shares have been or are being sold or transferred pursuant to Rule 144 (if the transferor is not an affiliate of the Company); or (C) the Company has received appropriate notice from the Holder that such Conversion Shares are eligible for resale under Rule 144 without volume or manner-of-sale restrictions.

(b) Upon delivery of a Notice of Conversion or any Automatic Exercise, as applicable, the Holder shall be deemed to have become the registered legal and beneficial owner of the Conversion Shares with respect to which the conversion rights under this Instrument have been exercised, irrespective of the date such Conversion Shares are credited to the Holder's DTC account or the date of delivery of the certificate(s) evidencing such Conversion Shares (as the case may be). If the attached Instrument is submitted in connection with any exercise of the conversion rights pursuant to Section 2(e) of the attached Instrument and the Maximum Conversion Amount then available for conversion into Conversion Shares is greater than the Aggregate Conversion Amount being converted into Conversion Shares upon such exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than two (2) Business Days after the date of settlement pursuant to Section 2(e) of the attached Instrument and, at its own expense, issue and deliver to the Holder (or its designee) a new conversion instrument representing the right to convert the newly calculated maximum amount, after giving effect to such exercise, of the Outstanding Amount of Loans owing to the Holder for subscription for Conversion Shares (such newly calculated maximum amount being an amount equal to (i) the Maximum Conversion Amount which was available for conversion immediately prior to such exercise, minus (ii) the Aggregate Conversion Amount for such exercise).

(c) The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance of Conversion Shares upon exercise of the conversion rights under the attached Instrument (but not any subsequent transfer of Conversion Shares so issued).

(d) Notwithstanding any other provision in this Agreement, the Holder may elect, at its sole discretion, to receive unregistered Conversion Shares issued in response to a Notice of Conversion or any Automatic Exercise instead of Conversion Shares registered pursuant to any registration statement filed with the Commission to register the Conversion Shares. In such case, the Holder agrees and acknowledges that any such unregistered Conversion Shares shall bear a securities law legend substantially similar to the legend on the facing page of the attached Instrument, to the extent required by applicable securities laws.

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EXHIBIT C  
FORM OF SELLING SECURITYHOLDER QUESTIONNAIRE

[See attached]



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**GREENBROOK TMS INC.**

**SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE**

The undersigned beneficial owner of common shares (the “*Common Shares*”) of GREENBROOK TMS INC. (the “*Company*”) understands that the Company has filed or intends to file with the United States Securities and Exchange Commission (the “*Commission*”) a Registration Statement for the registration and resale of the Registrable Securities, in accordance with the terms of the Fifth Amended and Restated Common Share Conversion Instrument, dated as of August 1, 2023 (the “*Conversion Instrument*”), among the Company and the Holder (as defined therein). A copy of the Conversion Instrument is available from the Company upon request at the address set forth below. All capitalized terms used and not otherwise defined herein will have the meanings ascribed thereto in the Conversion Instrument.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**1. Name.**

(a) Full Legal Name of Selling Securityholder

(b) \_\_\_\_\_  
Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities Listed in Item 3 below are held:

(c) \_\_\_\_\_  
Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by the questionnaire):

\_\_\_\_\_

**2. Address for Notices to Selling Securityholder:**

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

**3. Beneficial Ownership of Registrable Securities:**

(a) Type and Amount of Registrable Securities Beneficially Owned:

\_\_\_\_\_

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**4. Broker-Dealer Status:**

- (a) Are you a broker-dealer?  
Yes  No

Note: If yes, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

- (b) Are you an affiliate of a broker-dealer?  
Yes  No

- (c) If you are an affiliate of a broker-dealer, do you certify that you bought the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?  
Yes  No

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

**5. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.**

Except as set forth below in this Item 5, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item 3.

Type and Amount of Other Securities Beneficially Owned by the Selling Securityholder:

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**6. Relationships with the Company:**

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the Effective Date for the Registration Statement.

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By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus.

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**IN WITNESS WHEREOF** the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

**Beneficial Owner:**

\_\_\_\_\_

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

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

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

**PLEASE E-MAIL A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**

Greenbrook TMS Inc.  
890 Yonge Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
Canada M4W 3P4  
Email: [eloubser@greenbrooktms.com](mailto:eloubser@greenbrooktms.com)  
Attention: Erns Loubser, Chief Financial Officer

***With a copy to:***

Christopher R. Bornhorst  
Torys LLP  
1114 Avenue of The Americas, 23<sup>rd</sup> Floor  
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## REGISTRATION RIGHTS AGREEMENT

**THIS REGISTRATION RIGHTS AGREEMENT**, dated as of August 15, 2023 (this “*Agreement*”), has been entered into by and between **GREENBROOK TMS INC.**, an Ontario corporation (the “*Company*”) and the Purchasers (as defined below).

### BACKGROUND

In connection with the Note Purchase Agreement, dated as of August 15, 2023 (the “*NPA*”), by and between the Purchasers (as defined below) and the Company, pursuant to which the Purchasers have agreed to (i) exchange certain outstanding debt instruments previously issued by the Company for new unsecured subordinated promissory notes (each as amended and restated, supplemented or otherwise modified from time to time, the “*Notes*”) and/or (ii) purchase Notes, collectively, in an aggregate principal amount of Notes of up to \$10,000,000 (the “*Note Acquisition*”). The Notes will be convertible into common shares in the capital of the Company (the “*Common Shares*”), and the Company has agreed to provide to the Purchasers certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder (together, the “*Securities Act*”), and applicable state securities laws, with respect to the Common Shares.

### AGREEMENT

In light of the above, the Company and the Purchasers hereby agree as follows:

#### 1. Definitions.

As used in this Agreement, the following terms will have the respective meanings set forth in this Section 1:

“*Agreement*” has the meaning set forth in the preamble.

“*Advice*” has the meaning set forth in Section 2(c)(iv).

“*Board*” means the board of directors of the Company.

“*Block Trade*” means a Demand Underwritten Offering that does not require a management road show.

“*Blue Sky*” has the meaning set forth in Section 3(m).

“*Business Day*” means (i) a day on which the Common Shares are traded on a Trading Market, (ii) if the Common Shares are not listed on any Trading Market, a day on which the Common Shares are quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices) or (iii) in the event that the Common Shares are not listed or quoted as set forth in (i) and (ii) hereof, any day other than a Saturday, a Sunday or any day which is a national or provincial legal holiday in Canada, or a day on which banking institutions in The City of New York are authorized or required by law, regulation or executive order to remain closed.

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“**Claim**” has the meaning set forth in Section 5(b).

“**Commission**” means the Securities and Exchange Commission or any successor agency.

“**Common Shares**” has the meaning set forth in the preamble.

“**Company**” has the meaning set forth in the preamble.

“**Demand Registration Conditions**” has the meaning set forth in Section 2(a).

“**Demand Registration Notice**” has the meaning set forth in Section 2(d)(i).

“**Demand Registration Period**” means the period beginning thirty (30) days following the date hereof and ending on the date of expiration of the Effectiveness Period or if applicable, the date of the earlier termination of the registration rights under this Agreement pursuant to Section 6(c).

“**Demand Registration Statement**” means each registration statement under the Securities Act that is designated by the Company for the registration, under the Securities Act, of any Demand Underwritten Offering pursuant to Section 2(e). For the avoidance of doubt, the Demand Registration Statement may, at the Company’s election, be the Registration Statement filed pursuant to Section 2(a).

“**Demand Underwritten Offering**” has the meaning set forth in Section 2(d)(i).

“**Demand Underwritten Offering Majority Holders**” has the meaning set forth in Section 2(d)(iv)(1).

“**Demanding Notice Holders**” has the meaning set forth in Section 2(d)(i).

“**Discontinuance Notice**” has the meaning set forth in Section 3(d).

“**Effective Date**” means, with respect to any Registration Statement, the date on which the Commission first declares effective such Registration Statement.

“**Effectiveness Deadline**” means, with respect to a Registration Statement filed pursuant to Section 2(a), ninety (90) calendar days after the Shelf Notice Date in the case of a filing on Form S-3 or F-3 and one hundred eighty (180) calendar days after the Shelf Notice Date in the case of a filing on Form S-1 or F-1 *provided* that, in either case, such number of days may be extended by the Company, in its sole discretion, by up to an additional forty-five (45) calendar days if the condition of clause (B) of the definition of “Demand Registration Conditions” has not been satisfied at least forty-five (45) calendar days prior to the Shelf Notice Date.

“**Effectiveness Period**” has the meaning set forth in Section 2(a).

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

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**“Existing Registration Rights Agreement”** means any other registration rights agreement that the Company has entered into and is currently in effect, including, as of the date of this Agreement: (1) the Registration Rights Agreement dated May 17, 2019 between the Company and 1315 Capital II, L.P.; (2) the resale registration rights agreement, dated June 14, 2021, by and among the Company and 1315 Capital II, L.P., Greybrook Health Inc., Marlin Fund, Limited Partnership, Marlin Fund II, Limited Partnership, MSS GB SPV LP; (3) the resale registration rights agreement, dated July 14, 2022, by and among the Company Success Behavioral Holdings, LLC, Theragroup LLC, Benjamin Klein, Batya Klein and The Bereke Trust; and (4) Registration Rights Agreement, dated March 23, 2023, by and among the Company and Greybrook Health Inc., Marlin Fund, Limited Partnership, Marlin Fund II, Limited Partnership, Madryn Health Partners II, LP and Madryn Health Partners II (Cayman Master), LP.

**“FINRA”** means the Financial Industry Regulatory Authority, Inc. or any successor organization performing similar functions.

**“Holder”** or **“Holders”** means the holder or holders, as the case may be, from time to time of Registrable Securities (including any Purchaser or Purchasers who are beneficial owners of such Registrable Securities).

**“Indemnified Party”** has the meaning set forth in Section 5(c).

**“Indemnifying Party”** has the meaning set forth in Section 5(c).

**“Initial Purchasers”** means the Purchasers party to the NPA as of August 14, 2023.

**“Losses”** has the meaning set forth in Section 5(a).

**“Managing Underwriters”** means, with respect to any Demand Underwritten Offering, one or more registered broker-dealers that are designated in accordance with this Agreement to administer such offering.

**“Maximum Successful Underwritten Offering Size”** means, with respect to any Demand Underwritten Offering, the maximum number of securities that may be sold in such offering without adversely affecting the success of such offering, as advised by the Managing Underwriters for such offering to the Company and the applicable Demand Underwritten Offering Majority Holders.

**“Notes”** has the meaning set forth in the preamble.

**“NPA”** has the meaning set forth in the preamble.

**“Offering Launch Time”** means, with respect to a Demand Underwritten Offering, the earliest of (a) the first date a preliminary prospectus (or prospectus supplement) for such offering is filed with the Commission; (b) the first date such offering is publicly announced; and (c) the date a definitive agreement is entered into with the Managing Underwriters respect to such offering.

**“Other Participating Shareholders”** has the meaning set forth in Section 2(d)(iv)(1).

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“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Agreement.

“**Plan of Distribution**” has the meaning set forth in Section 2(a).

“**Proceeding**” means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

“**Prospectus**” means the prospectus included in a Registration Statement (including, without limitation, any preliminary prospectus, any free writing prospectus and any prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

“**Purchaser**” is any of one of the Purchasers.

“**Purchasers**” means the acquirors of the Notes, upon completion of the Note Acquisition, that are identified on the signature pages to the NPA from time to time.

“**Registrable Securities**” means the Common Shares that are issued upon conversion of the Notes to the Purchasers pursuant to Section 9.1 or 9.2 the NPA. “**Registrable Securities**” also includes any Common Shares issued or issuable with respect to the foregoing as a result of any stock split, stock dividend, recapitalization, exchange or similar event. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the Commission has declared a Registration Statement covering such securities effective and such securities have been disposed of pursuant to such effective Registration Statement; (ii) such securities may be sold by a Purchaser under circumstances in which all of the applicable conditions of Rule 144 are met and such securities may be sold pursuant to Rule 144 without any restriction whatsoever (including, without limitation, restriction on volume and manner of sale) and/or the legend restricting further transfer has been removed from the certificate for such securities; or (iii) such securities are no longer outstanding or are no longer beneficially owned by any of the Purchasers.

“**Registration Default**” has the meaning set forth in Section 2(c)(iv).

“**Registration Statement**” means a registration statement filed pursuant to the terms hereof and which covers the resale by the Holders, including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference (or deemed to be incorporated by reference) therein. For the avoidance of doubt, “**Registration Statement**” means the initial registration statement described above in this paragraph and any additional registration statement or registration statements that are needed to sell additional Registrable Securities with the effect that the obligations of the Company under this Agreement also extend to such additional registration statement or registration statements, in all cases, as specified in this Agreement.



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“**Rule 144**” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Rule 415**” means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Rule 424**” means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“**Securities Act**” has the meaning set forth in the preamble.

“**Selling Holder Questionnaire**” has the meaning set forth in Section 2(d)(i).

“**Selling Securityholders**” has the meaning set forth in Section 3(b).

“**Share Ownership Percentage**” means with respect to any Holder(s) as of any time, a fraction (a) whose numerator is the aggregate number of Registrable Securities owned (or beneficially owned) by such Holder(s) as of such time; and (b) whose denominator is the aggregate number of Registrable Securities that are then outstanding (or deemed outstanding on an as-converted basis) and held by all Holders under this Agreement.

“**Shelf Notice**” has the meaning set forth in Section 2(a).

“**Shelf Notice Date**” has the meaning set forth in Section 2(a).

“**Subsequent Shelf**” has the meaning set forth in Section 3(n).

“**Success TMS**” means Check Five LLC (doing business as, “Success TMS”).

“**Suspension Notice**” has the meaning set forth in Section 2(b).

“**Suspension Period**” has the meaning set forth in Section 2(b).

“**Trading Market**” means whichever of the NYSE American, New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Capital Market, Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Shares are listed or quoted for trading on the date in question.

## 2. Registration.

(a) **Shelf Registration.** Subject to satisfaction of the conditions set forth in Section 2(c), if, at any time during the Demand Registration Period, the Company receives a written notice (the “**Shelf Notice**”, and the date of Company’s receipt of the Demand Notice, “**Shelf Notice Date**”) from any of the Holders that are Initial Purchasers, the Company will (i) prepare and file,

within thirty (30) days of the Shelf Notice Date (so long as the Demand Registration Conditions have been satisfied as of such filing date and, if not satisfied, on the first business day following the satisfaction of such conditions), with the Commission a Registration Statement covering the resale from time to time of all Registrable Securities then beneficially owned by such Holder(s) for a secondary offering to be made on a continuous basis pursuant to Rule 415; and (ii) notify, at such time, the other Holders of such Shelf Notice and, upon the request of each other Holder given within ten (10) days of the Shelf Notice Date, the Company shall (so long as the Demand Registration Conditions have been satisfied as of such filing date and, if not satisfied, on the first business day following the satisfaction of such conditions) cause to be registered all of the Registrable Securities that each such Holder has requested to be included in such registration. The Registration Statement will be on either Form S-3 or F-3 (except if the Company is not then eligible to register for resale the Registrable Securities on either such form, in which case such registration will be on Form S-1 or F-1, and if for any reason the Company is not then eligible to register for resale the Registrable Securities on Form S-1 or F-1, then another appropriate form for such purpose) and will contain (except if otherwise required pursuant to written comments received from the Commission upon a review of such Registration Statement) a “**Plan of Distribution**” section, substantially in the form attached hereto as Annex A, as the same may be amended in accordance with the provisions of this Agreement. The Company will use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as soon as possible but, in any event, no later than the Effectiveness Deadline, and will use its reasonable best efforts to keep the Registration Statement (or a Subsequent Shelf) continuously effective under the Securities Act from the date of effectiveness of such Registration Statement until such date when all Registrable Securities covered by the Registration Statement cease to be Registrable Securities as determined by the counsel to the Company (the “**Effectiveness Period**”). For purposes of this Agreement, “**Demand Registration Conditions**” means (A) as of the applicable Shelf Notice Date, the Common Shares are listed on a Trading Market in the United States; and (B) on or prior to the Shelf Notice Date, the Company shall have received (or caused to be prepared) audited financial statements of Success TMS to the extent such audited financial statements are required by applicable U.S. securities laws, rules and regulations (including, but not limited to, Rule 3-05 of Regulation S-X under the Securities Act) for the filing of the applicable Registration Statement.

**(b) Suspension Periods.** Notwithstanding Section 2(a), the Company may, at any time, delay the filing or delay or suspend the effectiveness of a Registration Statement or any pending or potential Demand Underwritten Offering or, without suspending such effectiveness, deliver a notice (a “**Suspension Notice**”) that instructs any selling Holders not to sell any securities included in the Registration Statement or delay the filing of any amendment or supplement pursuant to Section 3, if the Board has determined and promptly notifies the selling Holders in writing that in its reasonable good faith judgment (i) a material event has occurred or is likely to occur with respect to the Company that has not been publicly disclosed and, if disclosed, could reasonably be expected to materially and adversely affect the Company and its ability to consummate the registration of the resale of the Registrable Securities or (ii) such registration could reasonably be expected to materially interfere with any material financing, acquisition, corporate reorganization, merger, tender offer or other significant transaction involving the Company (a “**Suspension Period**”), by providing the selling Holders with written notice of such Suspension Period and the reasons therefor. The Company will use its reasonable best efforts to provide such notice at least ten (10) Business Days prior to the commencement of such a Suspension Period; provided,

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however, that in any event the Company will provide such notice no later than the commencement of such Suspension Period; provided, further, that in no event will a Suspension Period exceed 30 days and in no event shall the total number of days subject to a Suspension Period during any consecutive 12-month period exceed 45 days. Any Suspension Period will not be deemed to end until the Holders have received a notice from the Company stating that such Suspension Period has ended.

**(c) Holders' Agreements.** It will be a condition of each Holder's rights under this Agreement, and each Holder agrees, as follows:

(i) **Cooperation & Selling Holder Questionnaire.** Such Holder will cooperate with the Company by, with reasonable promptness, supplying information and executing documents relating to such selling Holder or the securities of the Company owned by such selling Holder in connection with such registration which are customary for offerings of this type or is required by applicable laws or regulations, including but not limited to furnishing to the Company a completed questionnaire in the form attached to this Agreement as Annex B (a "**Selling Holder Questionnaire**"). The Company will not be required to include the Registrable Securities of a Holder in a Registration Statement if such Holder fails to furnish to the Company a fully completed Selling Holder Questionnaire at least five (5) Business Days prior to the thirtieth (30<sup>th</sup>) day following the applicable Shelf Notice Date.

(ii) **Undertakings.** Such selling Holder will enter into any undertakings and take such other action relating to the conduct of the proposed offering which the Company may reasonably request as being necessary to ensure compliance with federal and state securities laws and the rules or other requirements of FINRA.

(iii) **Shelf Sales.** In connection with and as a condition to the Company's obligations with respect to any shelf Registration Statement, each Holder covenants and agrees that it will not offer or sell any such Registrable Securities under the Registration Statement until the Registration Statement has been declared effective by the Commission and such Holder has provided a written notice to the Company of such proposed sale, including a copy of the applicable Prospectus. The Company and the Holders acknowledge and agree that in no way shall this clause limit such Holder's ability to sell securities without using the Registration Statement.

(iv) **Discontinuance of Sales.** Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a Suspension Notice or a Discontinuance Notice from the Company, such Holder will forthwith discontinue any offers and sales of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing (the "**Advice**") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company and the Holders acknowledge and agree that in no way shall this clause limit such Holder's ability to sell securities without using the Registration Statement.

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**(d) Demand Underwriting Registration Rights.**

(i) Right to Demand Underwriting Registration. At any time during the Demand Registration Period, and so long as the Demand Registration Conditions have been satisfied (and subject to the other provisions of this Section 2(d)), the Holders that are Initial Purchasers will have the right, exercisable by written notice satisfying the requirements of Section 2(d)(ii) (a “**Demand Registration Notice**”) to the Company by any one or more of such Holders whose aggregate Share Ownership Percentage exceeds twenty-five percent (25%) (such Holders, the “**Demanding Notice Holders**”), to require the Company to register, under the Securities Act, an underwritten public offering (a “**Demand Underwritten Offering**”) of Registrable Securities in accordance with this Section 2(d); *provided, however*, that:

(1) no Demand Registration Notice may be delivered, or will be effective if:

- (A) a prior Demand Underwritten Offering is pending or in process, and is not withdrawn, at the time such Demand Registration Notice is delivered;
- (B) the Company has already effected one (1) Demand Underwritten Offering (excluding Block Trades) under this Section 2(d)(i) or under the similar section of any other registration rights agreement that the Company has entered into and is currently in effect (each, an “**Existing Registration Rights Agreement**”) to which such Holder(s) are parties, provided that such Holder(s) may be permitted to participate in such offering pursuant to Section 2(e);
- (C) the Company has already effected one (1) Block Trade under this Section 2(d)(i) or under the similar section of any Existing Registration Rights Agreement to which such Holder(s) are parties, provided that such Holder(s) may be permitted to participate in such offering pursuant to Section 2(e);
- (D) it is delivered during a Suspension Period; or
- (E) the aggregate market value of the Registrable Securities of such Holder(s) to be included in the requested Demand Underwritten Offering is less than five million dollars (\$5,000,000) (unless such Registrable Securities constitute all of the Registrable Securities then outstanding and relating to the Common Shares that were issued pursuant to the NPA).

(ii) Contents of Demand Registration Notice. Each Demand Registration Notice sent by any Demanding Notice Holder(s) must state the following:

- (1) the name of, and contact information for, each such Demanding Notice Holder(s) and the number of Registrable Securities held by each such Demanding Notice Holder that were issued pursuant to the NPA;

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(2) the desired date of the Offering Launch Time for the requested Demand Underwritten Offering, which desired date cannot (without the Company's consent, which will not be unreasonably withheld or delayed) be earlier than ten (10) Business Days after the date such Demand Registration Notice is delivered to the Company;

(3) the number of Registrable Securities that are proposed to be sold by each such Demanding Notice Holder; and

(4) if the intended method of disposition is a Block Trade.

(iii) Participation by Holders Other Than the Demanding Notice Holder(s). If the Company receives a Demand Registration Notice sent by one or more Demanding Notice Holders but not by all Holders, then:

(1) the Company will, within one (1) Business Day, send a copy of such Demand Registration Notice to each Holder other than such Demanding Notice Holders, and such other shareholders as may be required pursuant to any Existing Registration Rights Agreement; and

(2) subject to Section 2(d)(v) and (vi), the Company will use its commercially reasonable efforts to include, in the related Demand Underwritten Offering, Registrable Securities of any such Holder that has requested such Registrable Securities to be included in such Demand Underwritten Offering, together with any Common Shares that may be requested to be included pursuant to any Existing Registration Rights Agreement, pursuant to a joinder notice that complies with the next sentence:

To include any of its Registrable Securities in such Demand Underwritten Offering, a Holder must deliver to the Company, no later than the first (1st) Business Day after the date on which Company sent a copy of such Demand Registration Notice pursuant to subsection (1) above, a written instrument, executed by such Holder, joining in such Demand Registration Notice, which instrument contains the information set forth in Section 2(d)(ii)(1) and (3) with respect to such Holder.

(iv) Certain Procedures Relating to Demand Underwritten Offering.

(1) Obligations and Rights of the Company. Subject to the other terms of this Agreement, upon its receipt of a Demand Registration Notice, the Company will (A) designate a Demand Registration Statement, in accordance with the definition of such term and this Section 2(d), for the related Demand Underwritten Offering; and (B) use its commercially reasonable efforts to effect such Demand Underwritten Offering in accordance with the reasonable requests set forth in such Demand Registration Notice or the reasonable requests of the Holder(s) of a majority of the Registrable Securities included in such Demand Underwritten Offering (the "***Demand Underwritten Offering Majority Holders***") and/or any shareholders requesting to participate in such offering pursuant to any Existing Registration Rights Agreement (the "***Other Participating Shareholders***"), and cooperate in

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good faith with the Demand Underwritten Offering Majority Holders and such Other Participating Shareholders in connection therewith. Notwithstanding anything to the contrary in this Agreement, the Company will not be obligated to effect, or take any actions in respect of, any Demand Underwritten Offering (i) at any time prior to the Effectiveness Deadline, (ii) during a Suspension Period or at any time when the securities proposed to be sold pursuant to such Demand Underwritten Offering are subject to any lock-up agreement (including pursuant to a prior Demand Underwritten Offering) that has not been waived or released, (iii) after the Company has already effected one (1) Demand Underwritten Offering pursuant to this Agreement or pursuant to any Existing Registration Rights Agreement to which such Holder(s) are parties, provided that such Holder(s) may be permitted to participate in such offering pursuant to Section 2(e), or (iv) after the Company has already effected one (1) Block Trade pursuant to this Agreement or pursuant to any Existing Registration Rights Agreement to which such Holder(s) are parties, provided that such Holder(s) may be permitted to participate in such offering pursuant to Section 2(e). The Company will be entitled to rely on the authority of the Demand Underwritten Offering Majority Holders of any Demand Underwritten Offering to act on behalf of all Holders that have requested any securities to be included in such Demand Underwritten Offering.

(2) Designation of the Underwriting Syndicate. The Managing Underwriters, and any other underwriter, for any Demand Underwritten Offering will be selected by the applicable Demand Underwritten Offering Majority Holders and any Other Participating Shareholders with the approval of the Company (which will not be unreasonably withheld or delayed).

(3) Authority of the Demand Underwritten Offering Majority Holders. The Demand Underwritten Offering Majority Holders for any Demand Underwritten Offering will have the following rights with respect to such Demand Underwritten Offering, which rights, if exercised, will be deemed to have been exercised on behalf of all Holders that have requested any securities to be included in such Demand Underwritten Offering:

(A) in consultation with the Managing Underwriters for such Demand Underwritten Offering, to determine the Offering Launch Time, which date shall be subject to the availability of an effective Registration Statement;

(B) to determine the structure of the offering, provided such structure is reasonably acceptable to the Company;

(C) to negotiate any related underwriting agreement and its terms, including the amount of securities to be sold by the applicable Holders pursuant thereto and the offering price of, and underwriting discount for, such securities; *provided, however*, that the Company will have the right to negotiate in good faith all of its representations, warranties and covenants, and indemnification and contribution obligations, set forth in any such underwriting agreement; and

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(D) withdraw such Demand Underwritten Offering by proving written notice of such withdrawal to the Company.

(4) Confidentiality. Each Holder agrees to treat as confidential information, its delivery or receipt of any Demand Registration Notice and the information contained therein, including the related Demand Underwritten Offering.

(v) Conditions Precedent to Inclusion of a Holder's Registrable Securities. Notwithstanding anything to the contrary in this Section 2(d), the right of a Holder to include any of its Registrable Securities in any Demand Underwritten Offering will be subject to the following conditions:

(1) the execution and delivery, by such Holder or its duly authorized representative or power of attorney, of any related underwriting agreement and such other agreements or instruments (including customary "lock-up" agreements, custody agreements and powers of attorney), if any, as may be reasonably requested by the Managing Underwriters for such Demand Underwritten Offering; and

(2) the provision, by such Holder no later than the Business Day immediately after the request therefor, of any information reasonably requested by the Company or such Managing Underwriters in connection with such Demand Underwritten Offering (including, but not limited to, completion of a fully completed Selling Holder Questionnaire at least five (5) Business Days prior to the filing of the applicable Registration Statement).

(vi) Priority of Securities in Demand Underwritten Offering. If the total number of securities requested to be included in a Demand Underwritten Offering pursuant to this Section 2(d) and by any Other Participating Shareholders exceeds the Maximum Successful Underwritten Offering Size for such Demand Underwritten Offering, then:

(1) the number of securities to be included in such Demand Underwritten Offering will be reduced to an amount that does not exceed the Maximum Successful Underwritten Offering Size; and

(2) to effect such reduction,

(A) if the number of Registrable Securities of Holders and other persons that have duly requested such Registrable Securities to be included in such Demand Underwritten Offering in accordance with this Section 2(d) (or in the case of any Other Participating Shareholders, pursuant to "piggyback rights" evidenced by the applicable Existing Registration Rights Agreement) exceeds such Maximum Successful Underwritten Offering Size, then the number of Registrable Securities to be included in such Demand Underwritten Offering will be allocated first to the Holders pro rata based on the total number of Registrable Securities so requested by each such Holder to be included in such Demand Underwritten Offering and, thereafter to other persons, including any Other Participating Shareholders.

**(e) Piggyback Registrations.** Without limiting any obligation of the Company, any time during the Demand Registration Period, if (i) there is not an effective Registration Statement covering all of the Registrable Securities, if the Prospectus contained therein is not available for use, or if Rule 144 is not available with respect to the Registrable Securities; (ii) the Demand Registration Conditions have been satisfied; and (iii) the Company shall determine to prepare and file with the Commission a registration statement relating to an offering for its own account or the account of others (including pursuant to any Existing Registration Rights Agreement) under the Securities Act of any of its equity or equity-linked securities (other than on Form S-4 or F-4, Form F-3D or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity or equity-linked securities to be issued solely in connection with any acquisition of any entity or business (or a business combination subject to Rule 145 under the Securities Act) or equity or equity-linked securities issuable in connection with the Company's stock option or other employee benefit plans, or a dividend reinvestment or similar plan or rights offering), then the Company shall deliver to each Holder a written notice of such determination and, if within five (5) Business Days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement all or any part of such Registrable Securities that such Holder requests to be registered (subject to the same procedural requirements and underwriter cut-back limitations as referred to in Section 2(d)(v) and (vi), *mutatis mutandis*); provided, however, the Company shall not be required to register any Registrable Securities pursuant to this Section 2(e) that are the subject of a then-effective Registration Statement. The Company may postpone or withdraw the filing or the effectiveness of a piggyback registration at any time in its sole discretion. The Company shall not grant piggyback registration rights to any holders of its Common Shares or securities that are convertible into its Common Shares that are senior to the rights of the Holders set forth in this Section 2(e). It is understood and agreed that the piggyback registration rights set forth in this Agreement shall be deemed to rank equally with the piggyback registration rights in the Existing Registration Rights Agreements, and all holders of registrable securities under such Existing Registration Rights Agreements that seek to exercise piggyback registration rights thereunder shall be treated equally with the Holders that seek to exercise piggyback registration rights under this Agreement for purposes of participation in any such registration (subject to Section 3(l) of this Agreement).

**3. Registration Procedures.** In connection with the Company's obligations to effect any registration pursuant to Section 2, the Company and, as applicable, the Holders, will do the following (to the extent applicable):

**(a) FINRA Cooperation.** The Company and the applicable Holders will cooperate and assist in any filings required to be made with FINRA in respect of any Registration Statement.

**(b) Right to Review Prior Drafts.** Not less than five (5) Business Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto, the Company will furnish to each applicable Holder copies of the "**Selling Securityholders**" and "**Plan of Distribution**" sections of such documents (together with drafts of the Registration Statement or any related Prospectus or any amendment or supplement thereto) in the form in which the Company proposes to file them, which sections and documents will be subject to the review of each such Holder. Each such Holder will provide comments, if any, within three (3) Business Days after the date such materials are provided. The Company will not file a Registration Statement, any Prospectus or any amendments or supplements thereto in which the



“*Selling Securityholders*” or the “*Plan of Distribution*” sections thereof differ in any material respect from the disclosure received from a Holder in its Selling Holder Questionnaire (as amended or supplemented) or otherwise differ in any material respect from the drafts previously received by such Holder, except as may be required by the Commission. Each Holder whose Registrable Securities are to be sold pursuant to a Demand Underwritten Offering in accordance with Section 2(e) will be afforded the same rights set forth in this Section 3(b) with respect to any Registration Statement or Prospectus or any amendment or supplement thereto which names such Holder.

(c) Right to Copies. The Company will furnish to each applicable Holder and the Managing Underwriters, if any, without charge, (i) at least one (1) conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Holder (excluding those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, except if such documents are available on EDGAR; and (ii) as many copies of each Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Holder may reasonably request. The Company hereby consents to the use of such Prospectus and each amendment or supplement thereto by each of the selling Holders or Managing Underwriters, as applicable, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(d) Notices. In connection with any registration pursuant to Section 2(a), the Company will notify each Holder covered by the Registration Statement as promptly as reasonably practicable: (A) when the Prospectus or any prospectus supplement or post-effective amendment has been filed, and with respect to the Registration Statement or any post-effective amendment, when the same has become effective; (B) of any request by the Commission for any amendments or supplements to the Registration Statement or the Prospectus or for additional information; (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (E) of the happening of any event which it believes may make any statement made in the Registration Statement, the Prospectus or any document incorporated therein by reference untrue, or of any material misstatement or omission, and which requires the making of any changes in the Registration Statement, the Prospectus or any document incorporated therein by reference in order to make the statements therein not misleading; (F) upon the occurrence of a Suspension Period (items (C) through and including (F) being a “*Discontinuance Notice*”); and (G) upon the conclusion of a Suspension Period. In addition, during the pendency of any Demand Underwritten Offering pursuant to Section 2(d), but other than during a Suspension Period, the Company will provide notice to each Holder whose Registrable Securities are to be sold in such offering pursuant to the Registration Statement used in connection with the Demand Underwritten Offering, which Holders will be afforded the same notice set forth in clauses (A) through (H) of this Section 3(d) relating to such Registration Statement.

(e) Withdrawal of Suspension Orders. The Company will use its reasonable best efforts to respond as promptly as reasonably possible to any comments received from the Commission with respect to any Registration Statement or any amendment thereto (and the Holders shall cooperate to resolve any such comments in respect of the selling shareholder information contained therein, to the extent applicable to such Holders) and to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement or the suspension of the qualification of the Registrable Securities for sale in any jurisdiction, or to prevent any such suspension.

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**(f) Supplements & Amendments.** In connection with any registration pursuant to Section 2(a), and subject to any Suspension Period, the Company, if required by applicable federal securities laws, based on the advice of the Company's counsel, will prepare a supplement or post-effective amendment to a Registration Statement, the related Prospectus or any document incorporated therein by reference or file any other required document or, if necessary, renew or refile a Registration Statement prior to its expiration, so that, as thereafter delivered to the purchasers of the Registrable Securities, (A) the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading; (B) such Registration Statement remains continuously effective as to the applicable Registrable Securities for its applicable Effectiveness Period; (C) the related Prospectus may be supplemented by any required prospectus supplement, and as so supplemented may be filed pursuant to Rule 424 and (D) the Prospectus will be supplemented, if necessary, to update the disclosure of the number of shares that each Holder intends to sell, reflecting prior resales in accordance with guidance of the staff of the Commission (as such guidance may be substituted for, amended or supplemented by the staff of the Commission after the date of this Agreement). Furthermore, subject to a Holder's compliance with its obligations under Section 2(c)(i), the Company will take such actions as are required to name such Holder as a selling Holder in a Registration Statement or any supplement thereto and to include (to the extent not theretofore included) in such Registration Statement the Registrable Securities identified in such Holder's Selling Holder Questionnaire.

**(g) Listing.** The Company will use its reasonable best efforts to cause all Registrable Securities covered by the Registration Statement to be listed on each securities exchange on which the Common Shares are then listed if so required by the rules of such exchange and if requested by the Holder thereof.

**(h) Transfer Agent & Registrar.** The Company will provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by a Registration Statement filed pursuant to this Agreement from and after a date not later than the Effective Date of such Registration Statement.

**(i) Certificates.** The Company will cooperate with the applicable Holders to facilitate the timely preparation and delivery of any certificates or book-entry statements representing Registrable Securities to be delivered to a transferee pursuant to any Registration Statement, which certificates or book-entry statements will be free of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

**(j) CUSIPs.** The Company, if necessary, will use its best efforts to maintain the existing CUSIP number for the Registrable Securities as of the Effective Date of the Registration Statement.

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**(k) Agreement Not to Co-Mingle Registrable Securities.** For purposes of calculating the number of Registrable Securities, each Holder hereby agrees to maintain a separate Direct Registration System book-entry position for its respective Registrable Securities or otherwise to hold such Registrable Securities in certificated form, and not co-mingle any other Common Shares with such Registrable Securities, whether such other Common Shares are beneficially owned as of the date of this Agreement or hereafter acquired by such Holder.

**(l) Legal Counsel.** Holders will have the right to select one legal counsel, at the Company's expense pursuant to Section 4, to review, on behalf of such Holders, any Registration Statement or Prospectus prepared pursuant to Section 2 or this Section 3, which will be such counsel as designated by the Holders of a majority of the Registrable Securities then outstanding; *provided* that no more than one legal counsel can be selected for the selling securityholders in any offering pursuant to this Agreement in the event that the Holders exercise their piggyback rights under Section 2(e) in respect of an offering pursuant to any Existing Registration Rights Agreement. The Company will reasonably cooperate with such legal counsel's reasonable requests in performing their obligations under this Agreement.

**(m) Blue Sky.** The Company will, prior to any public offering of Registrable Securities, use its reasonable best efforts to register or qualify or cooperate with the selling Holders or Managing Underwriters, in the case of a Demand Underwritten Offering, in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or blue sky laws ("**Blue Sky**") of all jurisdictions within the United States that the selling Holders or Managing Underwriters, in the case of a Demand Underwritten Offering, request in writing be covered, to keep each such registration or qualification (or exemption therefrom) effective during the applicable Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by any Registration Statement, including in connection with a Demand Underwritten Offering; provided, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to become subject to any material tax in any such jurisdiction where it is not then so subject.

**(n) Subsequent Shelf.** If, at the time of filing of a Registration Statement pursuant to Section 2(a), the Company is not eligible to use Form S-3 or F-3 for transactions involving secondary offerings and the Company is not otherwise eligible to incorporate by reference prospectively into such Registration Statement, then at such time as the Company becomes eligible to register transactions involving secondary offerings on Form S-3 or F-3, the Company may, in its sole discretion, file in accordance with the procedures outlined in this Section 3, including but not limited to all required notices to the Holders, an additional Registration Statement on Form S-3 or F-3 to cover resales pursuant to Rule 415 of the Registrable Securities (a "**Subsequent Shelf**"), and, when such Subsequent Shelf has been filed with the Commission, the Company may, concurrently with its filing of a request for acceleration of effectiveness of such Subsequent Shelf, withdraw or terminate the original Registration Statement; provided, however, that nothing in this Section 3(n) will be interpreted to limit the Company's obligations pursuant to Section 2(a).

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(o) Certain Covenants Relating to Underwritten Offerings. The following covenants will apply, in each case to the extent applicable, in connection with any Demand Underwritten Offering:

(i) Underwriting Agreement and Related Matters. The Company will (1) execute and deliver any customary underwriting agreement or other agreement or instrument reasonably requested by the Managing Underwriters for such offering; (2) use its commercially reasonable efforts to cause such customary legal opinions, comfort letters, “lock-up” agreements and officers’ certificates to be delivered in connection therewith; and (3) cooperate in good faith with such Managing Underwriters in connection with the disposition of Registrable Securities pursuant to such offering.

(ii) Marketing and Roadshow Matters. Except in the case of a Block Trade, the Company will cooperate in good faith with the Managing Underwriters for such offering in connection with any marketing activities relating to such offering, including any roadshow.

(iii) FINRA Matters. The Company and the Holders will cooperate and assist in any filings required to be made with FINRA in connection with such offering.

#### **4. Registration Expenses.**

All fees and expenses incident to the performance of or compliance with this Agreement by the Company will be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement including, without limitation: (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Common Shares are then listed for trading, (B) related to compliance with applicable state securities or Blue Sky laws and (C) incurred in connection with the preparation or submission of any filing with FINRA); (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing Prospectuses); (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of (A) counsel for the Company and (B) counsel for the Holders pursuant to Section 3(l) in an amount not to exceed US\$25,000, in the case of registration pursuant to Section 2(a) or Section 2(e), or US\$50,000, in the case of registration pursuant to Section 2(d), as applicable, for any Registration Statement; (v) Securities Act liability insurance, if the Company so desires such insurance; (vi) fees and expenses of all other persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement and (vii) all of the Company’s own internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder; provided, however, that each selling Holder will pay (i) all underwriting discounts, commissions, fees and expenses and all transfer taxes with respect to the Registrable Securities sold by such selling Holder; (ii) any fees and expenses of legal counsel other than covered by the Company in clause 4(iv)(B) above and (iii) all other expenses incurred by such selling Holder and incidental to the sale and delivery of the shares to be sold by such Holder.

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## 5. Indemnification.

**(a) Indemnification by the Company.** The Company will, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, severally and not jointly with any other Holder, the officers, directors, partners, members and shareholders of each such Holder and each person who controls any such Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of any such controlling persons, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and reasonable attorneys' fees) and expenses (collectively, "**Losses**"), as incurred, arising out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein to make the statements not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, except to the extent, but only to the extent, that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Holder expressly for use in a Registration Statement, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved in writing by such Holder for use in the Registration Statement, such Prospectus or such form of prospectus (it being understood and agreed that the only such information furnished to the Company by or on behalf of any Holder consists of the information described in Annex B hereto, as may be amended in accordance with the provisions of this Agreement) or (2) resulted from the use by any Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that such Prospectus is outdated or defective and prior to the receipt by such Holder of an Advice or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the Advice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected.

**(b) Indemnification by Holders.** Each Holder will, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, partners, members and shareholders and each person who controls the Company (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of such controlling person, in each case to the fullest extent permitted by applicable law from and against all Losses, as incurred, arising solely out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein to make the statements not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading to the extent, but only to the extent, that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Holder expressly for use in a Registration Statement or Prospectus, or to the extent that such information relates to such Holder or such Holder's proposed method of distribution of Registrable Securities and was reviewed and approved in writing by such Holder for use in the Registration Statement or Prospectus (it being understood and agreed that the only such information furnished to the

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Company by or on behalf of any Holder consists of the information described in Annex B hereto, as may be amended in accordance with the provisions of this Agreement) or (2) resulted from the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that the Prospectus is outdated or defective and prior to the receipt by such Holder of an Advice or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the Advice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected; provided, however, that the obligation to indemnify will be several and not joint and in no event will the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by any such selling Holder upon the sale of the Registrable Securities under the Registration Statement giving rise to such indemnification obligation.

**(c) Conduct of Indemnification Proceedings.** In order for a Person (the “*Indemnified Party*”) to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim or demand made by any Person against the Indemnified Party (a “*Claim*”), such Indemnified Party must notify the indemnifying party (“*Indemnifying Party*”) in writing, and in reasonable detail, of the Claim as promptly as reasonably possible after receipt by such Indemnified Party of notice of the Claim; provided, however, that failure to give such notification on a timely basis shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party’s receipt thereof, copies of all notices and documents (including court filings and related papers) received by the Indemnified Party relating to the Claim.

If a Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses and acknowledges its obligation in writing to indemnify the Indemnified Party therefor, to assume at its cost the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party and to settle such suit, action, claim or proceeding in its discretion with an unconditional full release of the Indemnified Party and no admission of fault, liability, culpability or a failure to act by or on behalf of the Indemnified Party. Notwithstanding any acknowledgment made pursuant to the immediately preceding sentence, the Indemnifying Party shall continue to be entitled to assert any limitation to the amount of Losses for which the Indemnifying Party is responsible pursuant to its indemnification obligations. Should the Indemnifying Party so elect to assume the defense of a Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof unless (i) the Indemnifying Party has materially failed to defend, contest or otherwise protest in a timely manner against Claims or (ii) such Indemnified Party reasonably objects to such assumption on the grounds that there are defenses available to it which are different from or in addition to the defenses available to such Indemnifying Party and, as a result, a conflict of interest exists. Subject to the limitations in the preceding sentence, if the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. If the

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Indemnifying Party chooses to defend any Claim, all the parties hereto shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the Indemnifying Party' s request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Claim without the Indemnifying Party' s prior written consent (which consent shall not be unreasonably withheld).

The obligations of the Company and the Holders under this Section 5 shall survive completion of any offering of Registrable Securities pursuant to a Registration Statement and the termination of this Agreement. The Indemnifying Party' s liability to any such Indemnified Party hereunder shall not be extinguished solely because any other Indemnified Party is not entitled to indemnity hereunder.

**(d) Contribution.** If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party will 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 of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses will be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in Section 5(a) or 5(b) was available to such party in accordance with its terms. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in this Section 5. Notwithstanding the provisions of this Section 5, no Holder will be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

**(e) Other.** The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

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**6. Miscellaneous.**

**(a) Notices.** All notices or other communications hereunder will be in writing and will be given by (i) personal delivery, (ii) courier or other delivery service which obtains a receipt evidencing delivery, (iii) registered or certified mail (postage prepaid and return receipt requested) or (iv) facsimile or similar electronic device, to such address as may be designated from time to time by the relevant party, and which will initially be:

(i) in the case of the Company:

Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4  
Attn: Bill Leonard  
Email: bleonard@greenbrooktms.com

With a copy to:

Torys LLP  
1114 Avenue of the Americas, 23rd Floor  
New York, New York 10036  
Attn: Christopher R. Bornhorst, Esq.  
Email: cbornhorst@torys.com

(ii) in the case of each Purchaser, to the address on such Purchaser' s signature page to the NPA.

Notices to Holders shall be provided to the address specified on such Holder' s Selling Holder Questionnaire. All notices and other communications will be deemed to have been given (i) if delivered by the United States mail, three (3) Business Days after mailing (five (5) Business Days if delivered to an address outside of the United States), (ii) if delivered by a courier or other delivery service, one (1) Business Day after dispatch (two (2) Business Days if delivered to an address outside of the United States) and (iii) if personally delivered or sent by facsimile or similar electronic device, upon receipt by the recipient or its agent or employee (which, in the case of a notice sent by facsimile or similar electronic device, will be the time and date indicated on the transmission confirmation receipt). No objection may be made by a party to the manner of delivery of any notice actually received in writing by an authorized agent of such party.

**(b) Governing Law; Jurisdiction; Jury Trial; etc.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York. Each party hereby irrevocably submits to the non-exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party



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at the address for such notices to it under this Agreement and agrees that such service will constitute good and sufficient service of process and notice thereof. Nothing contained herein will be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Agreement or any transaction contemplated hereby.

**(c) Termination.** This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earlier to occur of (a) the mutual written agreement of the Company and the Holders holding or beneficially owning a majority of the Registrable Securities (except to the extent any such termination relates solely to one Holder, in which case, only the consent of such Holder shall be required) to terminate this Agreement or (b) as to any Holder, the first date after the six-month anniversary of the date of this Agreement on which such Holder and its Affiliates collectively no longer beneficially own at least 1% of the outstanding Common Shares, as determined in accordance with Rule 13d-3 of the Exchange Act.

**(d) Amendments and Waivers(e)** . Except as otherwise provided herein, the provisions of this Agreement may be amended or waived only upon the prior written consent of the Company and the Holders holding or beneficially owning a majority of the Registrable Securities (except to the extent any such amendment or waiver relates solely to one Holder, in which case, only the consent of such Holder shall be required).

**(e) Remedies.** In the event of a breach by the Company of its obligations under this Agreement, each Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Agreement.

**(f) Complete Agreement; Modifications.** This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the parties' entire agreement with respect to the subject matter hereof and supersede all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof and thereof. This Agreement may be amended, altered or modified only by a writing signed by the Company and the Holders of a majority of the Registrable Securities then outstanding.

**(g) Additional Documents.** Each party hereto agrees to execute any and all further documents and writings and to perform such other actions which may be or become necessary or expedient to effectuate and carry out this Agreement.

**(h) Third-Party Beneficiaries.** None of the provisions of this Agreement will be for the benefit of, or enforceable by, any third-party beneficiary, except with respect to the Holders. For the avoidance of doubt, none of the Other Participating Shareholders, if any, shall be third-party beneficiaries of this Agreement.

**(i) Successors and Assigns.** Except as provided herein to the contrary, this Agreement will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns.

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**(j) Waivers Strictly Construed.** With regard to any power, remedy or right provided herein or otherwise available to any party hereunder (a) no waiver or extension of time will be effective unless expressly contained in a writing signed by the waiving party and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

**(k) Severability.** The validity, legality or enforceability of the remainder of this Agreement will not be affected even if one or more of the provisions of this Agreement will be held to be invalid, illegal or unenforceable in any respect.

**(l) Attorneys' Fees.** Should any litigation be commenced (including any proceedings in a bankruptcy court) between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity hereunder, the party or parties prevailing in such proceeding will be entitled, in addition to such other relief as may be granted, to the attorneys' fees and court costs incurred by reason of such litigation.

**(m) Headings.** The Section headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular Section.

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGES TO FOLLOW]**

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*[Signature page follows.]*

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**IN WITNESS WHEREOF**, the parties have executed this Registration Rights Agreement to be effective as of the date first above written.

**GREENBROOK TMS INC.**,  
an Ontario corporation

By: /s/ William Leonard  
Name: William Leonard  
Title: President and Chief Executive Officer

Address for Notice:

Greenbrook TMS Inc.  
890 Yonge Street, 7th Floor  
Toronto, Ontario M4W 3P4  
Attention: Erns Loubser, Chief Financial Officer  
Phone No.: (416) 322-9700 x548  
Email: eloubser@greenbrooktms.com

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

Torys LLP  
1114 Avenue of the Americas, 23<sup>rd</sup> Floor  
New York, NY 10036  
Attention: Christopher R. Bornhorst, Esq.  
Email: cbornhorst@torys.com

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**IN WITNESS WHEREOF**, the parties have executed this Registration Rights Agreement to be effective as of the date first above written.

**GREYBROOK HEALTH INC.**

By: /s/ Sasha Cucuz  
Name: Sasha Cucuz  
Title: Chief Executive Officer

Address for Notice:

C/O Sasha Cucuz, President  
890 Yonge St.  
Suite 700  
Toronto, ON M4W 3P4  
Phone: 647.478.8881  
Email: sasha.cucuz@greybrook.com

Address for Delivery of Note(s) (if not same as address for notice): N/A

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement to be effective as of the date first above written.

**MADRYN HEALTH PARTNERS II, LP**

By: MADRYN HEALTH ADVISORS II, LP,  
its General Partner

By: MADRYN HEALTH ADVISORS GP II,  
LLC, its General Partner

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Managing Member

Address for Notice:

Madryn Asset Management, LP  
330 Madison, 33rd Floor  
New York, NY 10017  
Phone: 646 560 5491  
Email: aamin@madrynlp.com

Address for Delivery of Note(s) (if not same as address for notice): N/A

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement to be effective as of the date first above written.

**MADRYN HEALTH PARTNERS II (CAYMAN  
MASTER), LP**

By: MADRYN HEALTH ADVISORS II, LP, its  
General Partner

By: MADRYN HEALTH ADVISORS GP II,  
LLC, its General Partner

By: /s/ Avinash Amin

Name: Avinash Amin

Title: Managing Member

Address for Notice:

Madryn Asset Management, LP  
330 Madison, 33rd Floor  
New York, NY 10017  
Phone: 646 560 5491  
Email: aamin@madrynlp.com

Address for Delivery of Note(s) (if not same as address for notice): N/A

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## ANNEX A

### PLAN OF DISTRIBUTION

We are registering the Securities covered by this prospectus on behalf of the Selling Securityholders. All costs, expenses and fees connected with the registration of these Securities will be borne by us. Any brokerage commissions and similar expenses connected with selling the Securities will be borne by the Selling Securityholders. The Selling Securityholders may offer and sell the Securities covered by this prospectus from time to time in one or more transactions. The term "*Selling Securityholders*" includes pledgees, donees, transferees and other successors-in-interest who may acquire Securities through a pledge, gift, partnership distribution or other non-sale related transfer from the Selling Securityholders. The Selling Securityholders will act independently of the Company in making decisions with respect to the timing, manner and size of each sale. These transactions include:

through one or more underwriters or dealers in a public offering and sale by them, whether individually or through an underwriting syndicate led by one or more managing underwriters;

in "at the market offerings" within the meaning of Rule 415(a)(4) under the Securities Act and/or applicable Canadian securities laws, to or through a market maker or into an existing trading market, on an exchange or otherwise;

directly to a limited number of purchasers or to a single purchaser;

through agents;

by delayed delivery contracts or by remarketing firms;

ordinary brokerage transactions and transactions in which the broker solicits purchasers;

purchases by a broker-dealer as principal and resale by the broker-dealer for its own account pursuant to this prospectus;

exchange or over-the-counter distributions in accordance with the rules of the exchange or other market;

block trades in which the broker-dealer attempts to sell the Securities as agent but may position and resell a portion of the block as principal to facilitate the transaction, or in crosses, in which the same broker acts as agent on both sides of the trade;

transactions in options, swaps or other derivatives that may or may not be listed on an exchange;



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through distributions by a Selling Securityholder or its successors in interest to its members, general or limited partners or shareholders (or their respective members, general or limited partners or shareholders);

a combination of any such method of sale; or

any other method permitted pursuant to applicable law.

In connection with distributions of the Securities or otherwise, the Selling Securityholders may:

sell the Securities:

in negotiated transactions;

in one or more transactions at a fixed price or prices, which may be changed from time to time;

at market prices prevailing at the times of sale;

at prices related to such prevailing market prices; or

at negotiated prices;

sell the Securities:

on a national securities exchange;

in the over-the-counter market; or

in transactions otherwise than on an exchange or in the over-the-counter market, or in combination;

sell the Securities short and/or deliver the Securities to close out short positions;

enter into option or other transactions with broker-dealers or other financial institutions which require the delivery to them of Securities covered by this prospectus, which they may in turn resell; and

pledge Securities to broker-dealers or other financial institutions, which, upon a default, they may in turn resell.

The Selling Securityholders may also resell all or a portion of the Securities in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, as amended, or the Securities Act, as permitted by that rule, Section 4(a)(1) under the Securities Act, if available, or any other exemption from the registration requirements that become available, and in accordance with Canadian securities laws, rather than under this prospectus.

If underwriters are used in the sale of any Securities, such Securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions described above. Securities may be either offered to the public through underwriting syndicates represented by managing underwriters or directly by underwriters. We may use underwriters with whom we have a material relationship. As applicable, we will describe in each accompanying prospectus supplement the name of the underwriter(s) and the nature of any such relationship(s).

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If a dealer is used in an offering of Securities, the dealer may purchase the securities, as principal. The dealer may then resell the Securities to the public at varying prices to be determined by the dealer at the time of sale.

Securities may be sold directly or through agents designated from time to time. We will name any agent involved in the offering and sale of such shares and we will describe any commissions paid to the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, the agent will act on a best-efforts basis for the period of its appointment.

Underwriters, dealers and agents may be entitled to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, or to contribution with respect to payments made by the underwriters, dealers or agents, under agreements between us and the underwriters, dealers and agents.

Underwriters who participate in the distribution of Securities may be granted an option to purchase additional Securities in connection with the distribution.

Underwriters, dealers or agents may receive compensation in the form of discounts, concessions or commissions from us or our purchasers, as their agents in connection with the sale of securities. These underwriters, dealers or agents may be considered to be underwriters under the Securities Act. As a result, discounts, commissions or profits on resale received by the underwriters, dealers or agents may be treated as underwriting discounts and commissions. Each accompanying prospectus supplement will identify any such underwriter, dealer or agent and describe any compensation received by them from us. Any initial public offering price and any discounts or concessions allowed or re-allowed or paid to dealers may be changed from time to time.

In connection with sales of Securities, the Selling Securityholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of Securities in the course of hedging in positions they assume. The Selling Securityholders may also sell Securities short and the Selling Securityholders may deliver Securities covered by this prospectus to close out short positions and to return borrowed Securities in connection with such short sales. The Selling Securityholders may also loan or pledge Securities to broker-dealers that in turn may sell such Securities, to the extent permitted by applicable law. The Selling Securityholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of Securities offered by this prospectus, which Securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The Selling Securityholders may, from time to time, pledge or grant a security interest in some or all of the Securities owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the Securities from time to time pursuant to this prospectus or any amendment to this prospectus under the applicable rules under the Securities Act, amending, if necessary, the list of Selling Securityholders to include the

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pledgee, transferee or other successors in interest as Selling Securityholders under this prospectus. The Selling Securityholders may also transfer and donate Securities in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

A Selling Securityholder that is an entity may elect to make an in-kind distribution of Securities to its members, general or limited partners or shareholders pursuant to the registration statement of which this prospectus is a part by delivering a prospectus. To the extent that such members, general or limited partners or shareholders are not affiliates of ours, such members, partners or shareholders would thereby receive freely tradable Securities pursuant to the distribution through a registration statement. Additionally, to the extent that entities, members, partners or shareholders are affiliates of ours received shares in any such distribution, such affiliates will also be Selling Securityholders and will be entitled to sell Securities pursuant to this prospectus.

Any underwriter may engage in over-allotment transactions, stabilizing transactions, short-covering transactions and penalty bids in accordance with Regulation M under the Exchange Act of 1934 and applicable Canadian securities laws.

Underwriters, broker-dealers or agents who may become involved in the sale of Securities may engage in transactions with, and perform other services for, us in the ordinary course of their business for which they receive compensation.

In effecting sales, the Selling Securityholders may engage broker-dealers or agents, who may in turn arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the Selling Securityholders and/or from the purchasers of Securities for whom the broker-dealers may act as agents or to whom they sell as principal, or both. The compensation to a particular broker-dealer may be in excess of customary commissions. To our knowledge, there is currently no plan, arrangement or understanding between any Selling Securityholders and any broker-dealer or agent regarding the sale of any Securities by the Selling Securityholders.

The Selling Securityholders, any broker-dealers or agents and any participating broker-dealers that act in connection with the sale of the Securities covered by this prospectus may be "underwriters" under the Securities Act with respect to those Securities and will be subject to the prospectus delivery requirements of the Securities Act. Any profit that the Selling Securityholders realize, and any compensation that any broker-dealer or agent may receive in connection with any sale, including any profit realized on resale of Securities acquired as principal, may constitute underwriting discounts and commissions. If the Selling Securityholders are deemed to be underwriters, the Selling Securityholders may be subject to certain liabilities under statutes including, but not limited to, Section 11, 12 and 17 of the Securities Act and Section 10(b) and Rule 10b-5 under the Exchange Act.

The securities laws of some states may require the Selling Securityholders to sell the Securities in those states only through registered or licensed brokers or dealers. These laws may also require that we register or qualify the Securities for sale in those states unless an exemption from registration and qualification is available and the Selling Securityholders and we comply with that exemption. In addition, the anti-manipulation rules of Regulation M under the Securities

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Exchange Act of 1934 may apply to sales of Securities in the market and to the activities of the Selling Securityholders and their affiliates. Regulation M may restrict the ability of any person engaged in the distribution of the Securities to engage in market-making activities with respect to the Securities. All of the foregoing may affect the marketability of the Securities and the ability of any person to engage in market-making activities with respect to the Securities.

If any Selling Securityholder notifies us that he has entered into any material arrangement with a broker-dealer for the sale of Securities through a block trade, special offering, exchange distribution, over-the-counter distribution or secondary distribution, or a purchase by a broker or dealer, we will file any necessary supplement to this prospectus to disclose:

the number of Securities involved in the arrangement;

the terms of the arrangement, including the names of any underwriters, dealers or agents who purchase Securities, as required;

the proposed selling price to the public;

any discount, commission or other underwriting compensation;

the place and time of delivery for the Securities being sold;

any discount, commission or concession allowed, reallocated or paid to any dealers; and

any other material terms of the distribution of Securities.

In addition, if the Selling Securityholder notifies us that a donee, pledgee, transferee or other successor-in-interest of the Selling Securityholder intends to sell any securities, we will file an amendment to the registration statement of which this prospectus forms a part of or a supplement to this prospectus, if required.

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ANNEX B

GREENBROOK TMS INC.

SELLING SECURITYHOLDER NOTICE AND QUESTIONNAIRE

The undersigned beneficial owner of common shares (the “*Common Shares*”) in the capital of GREENBROOK TMS INC. (the “*Company*”) understands that the Company has filed or intends to file with the Securities and Exchange Commission (the “*Commission*”) a Registration Statement for the registration and resale of the Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of August [ ], 2023 (the “*Registration Rights Agreement*”), among the Company and the Purchasers (as defined therein). A copy of the Registration Rights Agreement is available from the Company upon request at the address set forth below. All capitalized terms used and not otherwise defined herein will have the meanings ascribed thereto in the Registration Rights Agreement.

The undersigned hereby provides the following information to the Company and represents and warrants that such information is accurate:

**1. Name.**

(a) Full Legal Name of Selling Securityholder

(b) Full Legal Name of Registered Holder (if not the same as (a) above) through which Registrable Securities Listed in Item 3 below are held:

(c) Full Legal Name of Natural Control Person (which means a natural person who directly or indirectly alone or with others has power to vote or dispose of the securities covered by the questionnaire):

**2. Address for Notices to Selling Securityholder:**

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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**3. Beneficial Ownership of Registrable Securities:**

(a) Type and Amount of Registrable Securities Beneficially Owned:

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**4. Broker-Dealer Status:**

(a) Are you a broker-dealer?

Yes  No

Note: If yes, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

(b) Are you an affiliate of a broker-dealer?

Yes  No

(c) If you are an affiliate of a broker-dealer, do you certify that you bought the Registrable Securities in the ordinary course of business, and at the time of the purchase of the Registrable Securities to be resold, you had no agreements or understandings, directly or indirectly, with any person to distribute the Registrable Securities?

Yes  No

Note: If no, the Commission's staff has indicated that you should be identified as an underwriter in the Registration Statement.

**5. Beneficial Ownership of Other Securities of the Company Owned by the Selling Securityholder.**

Except as set forth below in this Item 5, the undersigned is not the beneficial or registered owner of any securities of the Company other than the Registrable Securities listed above in Item 3.

Type and Amount of Other Securities Beneficially Owned by the Selling Securityholder:

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**6. Relationships with the Company:**

Except as set forth below, neither the undersigned nor any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the undersigned) has held any position or office or has had any other material relationship with the Company (or its predecessors or affiliates) during the past three years.

State any exceptions here: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The undersigned agrees to promptly notify the Company of any inaccuracies or changes in the information provided herein that may occur subsequent to the date hereof and prior to the Effective Date for the Registration Statement.

By signing below, the undersigned consents to the disclosure of the information contained herein in its answers to Items 1 through 6 and the inclusion of such information in the Registration Statement and the related prospectus. The undersigned understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus.

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**IN WITNESS WHEREOF** the undersigned, by authority duly given, has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent.

Dated:

**Beneficial Owner:**

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

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

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

**PLEASE FAX A COPY OF THE COMPLETED AND EXECUTED NOTICE AND QUESTIONNAIRE, AND RETURN THE ORIGINAL BY OVERNIGHT MAIL, TO:**

Greenbrook TMS Inc.  
890 Yonge Street, 7<sup>th</sup> Floor  
Toronto, Ontario  
Canada M4W 3P4  
Attention: Bill Leonard  
Email:  
Attention: [bleonard@greenbrooktms.com](mailto:bleonard@greenbrooktms.com)

*With a copy to:*

Torys LLP  
1114 Avenue of the Americas, 23<sup>rd</sup> Floor  
New York, NY 10036  
Attention: Christopher R. Bornhorst, Esq.  
Email: [cbornhorst@torys.com](mailto:cbornhorst@torys.com)