

Suggested Language: Venture Financial Rider

Stockholder Ownership:

A. Foreign Ownership (SBIR)

If the Company has acquired contracts under the [Small Business Innovation Research \(SBIR\) Program](#), then it should conduct an analysis upon receipt of funding from any non-U.S. investor to ensure the Company remains in compliance with the program requirements relating to ownership and control including: A company must be more than 50% directly owned and controlled by one or more individuals who are U.S. Citizens or “permanent resident aliens”; or more than 50% directly owned and controlled by another for-profit small business which itself is directly owned and controlled by individuals who are U.S. Citizens or “permanent resident aliens”. See the “Stock Purchase Agreement” section for additional suggestions regarding investor representations.

B. Foreign Investment (CFIUS)

The [Committee on Foreign Investment in the United States \(CFIUS\)](#) has jurisdiction over certain transactions where a foreign person invests in or acquires a U.S. business and has the power to block, modify, or unwind transactions that threaten U.S. national security interests. Depending on the Company’s industry and the markets/customers served by the Company, the Investor may require a CFIUS-related agreement in the Company’s Investors’ Rights Agreement or investor-specific side letter.

Investor and the Company agree that Investor shall not be afforded any of the following within the meaning of the Defense Production Act of 1950, as amended, including any implementing regulations thereof: (1) “control” of the Company, (2) access to any “material nonpublic technical information” in the possession of the Company, (3) membership or observer rights on, or the right to nominate an individual to a position on, the board of directors or equivalent governing body of the Company, or (4) any “involvement,” other than through the voting of shares, in “substantive decision making” by the Company regarding: (A) the use, development, acquisition, safekeeping, or release of “sensitive personal data” of U.S. citizens maintained or collected by the Company; (B) the use, development, acquisition, or release of any “critical technology”; or (C) the management, operation, manufacture, or supply of “covered investment critical infrastructure.”

C. Foreign Ownership (Facility Clearance/FOCI)

Per the [National Industrial Security Program Operating Manual](#) (NISPOM), a Company must notify the Defense Counterintelligence and Security Agency (DCSA) of any changes impacting the foreign ownership control or influence (FOCI) assessment related to a Company’s active Facility Clearance (FCL) or application for a Facility Clearance and any related mitigation agreements. The Company should evaluate the foreign person status of the Investor and their related ownership percentage and governance rights post-financing to determine if a notification must be made. See the “Stock Purchase Agreement” section for additional suggestions regarding investor representations.

Any Company that is considering an FCL application in the future should also be aware of the foreign person status of its investors, as that information will be reported to DCSA during the FCL application process and can impact DCSA’s FOCI review and ultimate mitigation or eligibility determination.

Stock Purchase Agreement or Side Letter:

The Company's Preferred Stock Purchase Agreement will likely include certain customary representation and warranties by the Company and investors, which should primarily be for the purpose of information gathering. We have highlighted a number of representations relevant to foreign ownership and intellectual property of defense innovation companies and within the techno-security ecosystem.

A. Foreign Ownership (Investor Representations)

To address the issues related to foreign ownership thresholds and notice obligations, the Company should include sufficient investor representations to provide the Company with assurances that such an investor is not a foreign person and/or confirmation of such investor's foreign person status. The following is one example of a foreign person representation that may be included in the Company's Preferred Stock Purchase Agreement or investor-specific side letter:

1. Foreign Investors. *If the Purchaser is not a United States person (as defined by Section 7701(a)(30) of the Code), the Purchaser hereby represents that it has [explicitly disclosed such status to the Company in writing and identified the nationality of the Purchaser's beneficial owners] and satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Shares or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale, or transfer of the Shares. The Purchaser's subscription and payment for and continued beneficial ownership of the Shares will not violate any applicable securities or other laws of the Purchaser's jurisdiction.*

2. CFIUS Foreign Person Status. *The Purchaser is not a "foreign person" or a "foreign entity," as defined in Section 721 of the Defense Production Act of 1950, as amended, including all implementing regulations thereof (the "DPA"). The Purchaser is not controlled by a "foreign person," as defined in the DPA. The Purchaser does not permit any foreign person affiliated with the Purchaser, whether affiliated as a limited partner or otherwise, to obtain through the Purchaser any of the following with respect to the Company: (i) access to any "material nonpublic technical information" (as defined in the DPA) in the possession of the Company; (ii) membership or observer rights on the Board of Directors or equivalent governing body of the Company or the right to nominate an individual to a position on the Board of Directors or equivalent governing body of the Company; (iii) any involvement, other than through the voting of shares, in the substantive decision-making of the Company regarding (x) the use, development, acquisition, or release of any "critical technology" (as defined in the DPA), (y) the use, development, acquisition, safekeeping, or release of "sensitive personal data" (as defined in the DPA) of U.S. citizens maintained or collected by the Company, or (z) the management, operation, manufacture, or supply of "covered investment critical infrastructure" (as defined in the DPA); or (iv) "control" of the Company (as defined in the DPA).*

Sanctions. *Neither the Purchaser, nor any of its officers, directors, employees, agents, stockholders or partners, is: (i) organized under the laws of, ordinarily resident in, or located in a country or territory that is the subject of comprehensive economic sanctions administered by the United States and any other applicable jurisdiction, which as of the date of this Agreement comprise Belarus, Cuba, Iran, North Korea, Russia, Syria, and the Crimea, Donetsk, Luhansk, Kherson, and Zaporizhzhia regions of Ukraine (collectively, "Restricted Countries"); (ii) 50% or more owned or otherwise controlled by the government of a Restricted Country; or (iii) (A)*

*designated on a sanctioned parties list administered by the United States[, European Union, or United Kingdom], including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, [and] Sectoral Sanctions Identification List[, the Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions, and the UK's Consolidated Sanctions List] (collectively, "**Designated Parties**")*; or (B) 50% or more owned or, where relevant under applicable Sanctions, controlled, individually or in the aggregate, by one or more Designated Party, in each case only to the extent that dealings with such persons are prohibited pursuant to applicable sanctions (collectively, "**Sanctioned Parties**").

B. Intellectual Property (Company Representations)

The following representation is a common one included in most Stock Purchase Agreements and found on the NVCA form. However, the Company may not be able to make this representation if any Company-owned/developed IP (even partially) was developed under a contract with a government entity, university, college, or other third-party source, such that the funding from this source/contract contributed to the development. Also, if a person who contributed to the IP, also performed services for a government entity, university, or third-party source, such that the services rendered would affect the Company's rights in the IP, the Company may not be able to make the rep. For example, if IP was developed pursuant to another transaction agreement (OTA) with the DOD, then the Company would not be able to make the following representation:

No government funding, facilities of a university, college, other educational institution or research center; or funding from third parties was used in the development of any Company-Owned Intellectual Property. No Person who was involved in, or who contributed to, the creation or development of any Company-Owned Intellectual Property, has performed services for the government, university, college, or other educational institution or research center in a manner that would affect Company's rights in the Company-Owned Intellectual Property.

Voting Agreement or Side Letter:

The Company's Voting Agreement will likely include certain customary terms pertaining to election of Board members and investor rights to observer Board meetings. We have highlighted a few considerations regarding Board composition and observer rights that are especially relevant to defense innovation companies.

A. Board Composition

Investors may request the right to appoint a director to the Board of Directors, in connection with a financing. Depending on the nature of any contracts with U.S. government agencies and the confidentiality obligations imposed, the Company may want to create internal protocols for the restriction of certain materials from all Board members and/or create a separate committee for the review of confidential information. If such a committee is formed, it is recommended that the Company impose restrictions on membership (i.e., only those with a certain level of security clearance may sit on the committee).

The Company may also need to evaluate the U.S. person status of the investor and/or the board nominee to evaluate any potential CFIUS or foreign ownership control or influence (FOCI) review implications

and risks. In some scenarios, a board nomination right afforded to a foreign investor can trigger a mandatory CFIUS filing requirement, which must be submitted 30 days prior to Closing. This is a particular risk if the Company produces, designs, tests, manufactures, fabricates, or develops critical technologies, including defense articles subject to the International Traffic in Arms Regulations and many items on the Export Administration Regulations' Commerce Control List. Additionally, where a Company has an active FCL, or is in an FCL review process, any changes to an entity's FOCI status must be reported directly to DCSA. Such changes can include a change in ownership, where a foreign person will own over 5% of the outstanding shares of the cleared entity, or a foreign investor's right to control the nomination of a board of directors. DCSA then has the discretion to conduct another FOCI review, which in some cases can result in DCSA temporarily suspending a company's FCL or pausing eligibility for new classified contracts until the review is completed. This means that regardless of whether a Company is a TID US business (as defined by the CFIUS regulations), it may still have a regulatory reporting requirement due to an investor's foreign person status. This requires a rigorous look through to an investor's ultimate beneficial ownership.

B. Board Observer

Investors may request both a Board seat and a Board observer seat or only a Board observer seat. While Board observers are generally (subject to the conditions of the provision) provided the same materials as the Board, the Company should ensure that any materials that may be subject to confidentiality provisions or regulations (i.e., those materials subject to export controls (EAR or ITAR), security clearance requirements, or information that would be considered "material nonpublic technical information" as defined at 31 CFR 801.232), are restricted from Board observers. Other terms that may be included in this provision are delivery deadlines for materials to the Board observers and mandatory notification requirements of any upcoming Board meetings which the observer is entitled to join.

The Company shall invite a representative of the Investor to attend [all meetings] of its board of directors in a nonvoting observer capacity (the "Observer") and shall give such representative copies of [all materials] provided to directors. The Observer may be excluded from access to any materials if the company believes that such exclusion is reasonably necessary to maintain and protect highly confidential proprietary information or [customer sensitive or secure information], upon advice of counsel, that such exclusion is reasonably necessary to preserve the attorney-client privilege, [to prevent an actual or potential conflict of interest], such materials constitute material nonpublic technical information (as defined in 31 C.F.R. § 800.232), or for other similar reasons. The Observer agrees to hold in confidence and trust all information provided by the Company.

Investors' Rights Agreement or Side Letter:

The Company's Investors' Rights Agreement will likely include certain customary covenants/agreements by the Company to comply with certain post-closing obligations. We have highlighted a number of terms relevant to Company compliance, which may be addressed in the Company's Investors' Rights Agreement or in a separate side letter between the Company and individual investors.

A. Compliance Covenants [Export Control and Sanctions]

Language may be included in the compliance covenants related to the Company's notification requirements to the Investor in the event of a discovered violation of laws related to import and export regulation. There may also be language included requiring the Company to investigate any such

allegations or notifications within a specific time frame (more stringent than what is required by applicable regulations). Depending on the industry and goods or services involved, U.S. export control laws, including the ITAR and EAR, may prohibit or limit the Company from sharing certain data or other information with foreign nationals, parties outside the United States, or representatives of foreign entities.

To the Company's knowledge, the Company is in compliance with all applicable provisions of United States export and import control laws, statutes, decrees, policies, guidelines, and regulations, including the Export Administration Regulations ("EAR"), the International Traffic in Arms Regulations ("ITAR"), the regulations administered by the Office of Foreign Assets Control ("OFAC"), and the export control laws and regulations of any other applicable jurisdiction (collectively, the "Export/Import Control Laws"). [The Company shall notify the Investor if the Company is made aware of any violation of Export/Import Control Laws.]

B. Compliance Covenants [FCPA]

Language may be included in the compliance covenants related to the Company's notification requirements to the Investor in the event of a discovered violation of laws related to anti-corruption and bribery. There may also be language included requiring the Company to investigate any such allegations or notifications within a specific time frame (more stringent than what is required by applicable regulations). These covenants will more likely be applicable in situations where the Company has contact with, does business with/in, or is contemplating expansion into foreign non-U.S. jurisdictions.

[To the Company's knowledge,] the Company is not, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any foreign official, as such term is defined in the Foreign Corrupt Practices Act ("FCPA"). The Company [shall maintain] [maintains] a system of controls to ensure compliance with the FCPA and other applicable anti-corruption and anti-bribery regulations. [The Company shall notify the Investor if the Company is made aware of any violation of the FCPA.]

Or

The Company covenants that it shall not [knowingly] (and shall not [knowingly]) permit any of its subsidiaries or affiliates or any of its or their respective directors, officers, managers, employees, independent contractors, representatives or agents to) promise, authorize or make any payment to, or otherwise contribute any item of value to, directly or indirectly, any third party, including any Non-U.S. Official (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")), in each case, in violation of the FCPA, or any other applicable anti-bribery or anti-corruption law. The Company further covenants that it shall (and shall cause each of its subsidiaries and affiliates to) cease all of its or their respective activities, as well as remediate any actions taken by the Company, its subsidiaries or affiliates, or any of their respective directors, officers, managers, employees, independent contractors, representatives or agents in [any known] violation of the FCPA, or any other applicable anti-bribery or anti-corruption law. The Company further covenants that it shall (and shall cause each of its subsidiaries and affiliates to) maintain systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) to [reasonably] ensure compliance with the FCPA and any other applicable anti-bribery or anti-corruption law. Upon request, the Company agrees to provide responsive information or certifications[, to the extent permitted by law], as the case may be, concerning its compliance with applicable anti-corruption laws. The Company shall promptly notify [,to the extent permitted by law] the Investor if the Company becomes aware of any claim, action, suit, proceeding, arbitration, complaint, charge or

investigation alleging any violation of anti-bribery or anti-corruption laws. The Company shall, and shall cause any direct or indirect subsidiary or entity controlled by it, whether now in existence or formed in the future, to comply with the FCPA and any other applicable anti-bribery or anti-corruption law. The Company shall use its best efforts to cause any direct or indirect subsidiary, whether now in existence or formed in the future, to comply in all material respects with all applicable laws.

C. Compliance Policies Development

Language may be included in the compliance covenants that require the Company to develop more robust policies with the assistance of outside counsel following the closing of the Company's venture financing. The following language is one example of such language:

The Company shall, within six (6) months following the date hereof, retain outside counsel to review the Company's current and future regulatory and compliance risks and develop a roadmap with appropriate and reasonable triggering conditions for the Company's adoption of corporate policies (the "Policy Roadmap") regarding (i) compliance with applicable provisions of U.S. export control, sanctions, and customs laws and regulations; (ii) restricted party screening policies; (iii) compliance with ITAR, OFAC, and FCPA; (iv) internal controls (including without limitation accounting systems, purchasing systems and billing systems) to ensure that all books and records of the Company accurately and fairly reflect, in reasonable detail and in all material respects, all transactions and dispositions of funds and assets; (v) compliance in all material respects with, in connection with the Company's collection, storage, transfer (including, without limitation, any transfer across national borders) and/or use and handling of any [sensitive information] and/or personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees and/or other third parties, and to the extent applicable, all other applicable laws in all relevant jurisdictions with respect to data privacy, including without limitation the General Data Protection Regulation; (vi) related party transactions; (vii) cybersecurity; and (viii) compliance with anti-boycott laws.

D. Compliance Covenants [Put Rights/Share Cancellation Rights]

In the event of non-compliance by the Company or other fundamental risks that may negatively impact strategic investors or affiliates, the following sections offer separate options for the same outcome – the Investor may cease its relationship with the Company (and forfeit any investor rights tied to such relationship) in the case of a trigger event. Depending on the agreement between the parties, this trigger event may be a violation by the Company (i.e., of a compliance covenant) or a simple election by the Investor to cease the relationship for whatever reason. If such a term is agreed upon by the parties, it is recommended that language be included to clarify that all rights of the investor terminate upon the cancellation or repurchase of equities held by the Investor.

Cancellation: [If the Company, directly or indirectly, violates any applicable law including, without limitation [given specific compliance requirements], then] the Investor may require the Company to cancel all of its [and its affiliates'] shares of capital stock in the Company [by giving written notice of such cancellation to the Company]. Upon receipt of such written notice of the cancellation the Investor shall be deemed to no longer own any securities of the Company.

Put Right: The Investor may require the Company to purchase [all[, and not less than all]], of the securities of the Company held by the Investor for an aggregate price equal to [\$1.00]. [The Company shall promptly make the payment to the Investor upon receipt of such written notice and

the Investor shall be deemed to no longer own any securities of the Company upon the Company receiving written notice from the Investor of the intent to exercise the put right election.]

Other Side Letter Terms:

In addition to customary terms found throughout the Company's financing document, it is also common for defense innovation companies and within the techno-security ecosystem for strategic investors to request specific "other terms" either in the Company's Investors' Rights Agreement or in a separate side letter between the Company and an individual investor.

A. Special Information and Notice Rights

Investors may request special information rights and notice rights beyond what would customarily be provided in venture financing documents. These special information rights are usually customized to the relationship between the Company and such investor and, therefore, would be contained in a separate side letter. Those special information rights and notice rights could take the form of these examples below:

On or prior to [December 31] of each calendar year, and such other times as the parties hereto may agree (after considering in good faith applicable facts and circumstances), upon Investors' request, the Company shall provide to Investors a list of (i) the Company's then-active contracts with or for the benefit of a United States governmental entity ("USG") to which the Company is a party, (ii) the Company's then-outstanding bids and proposals submitted to or for the benefit of USG for which an award has not been issued, and (iii) USG-related opportunities that the Company then-intends to pursue in the then-following one (1) year period, in each case including the following information to the extent applicable: (a) Type of Contract (e.g., Prime Contract, Subcontract, OTA, SBIR, Vendor); (b) Contract/Solicitation Number; (c) Period of Performance; (d) Client Organization/Name; and (e) Short Description of Work. Investors shall use the foregoing information solely to monitor, evaluate and mitigate any actual, potential or perceived organizational conflicts of interest that may impact Investors or any of their affiliates (the "Conflicts of Interest"). Investors shall notify the Company if it identifies any Conflicts of Interest unless prohibited by law or applicable contract. The Company and Investors shall work in good faith to ensure that the amount of information to be provided by the Company under this provision is limited to the extent necessary to achieve the purpose set forth in this provision.

And/Or

To the extent permitted by law, the Company will deliver to Investors prompt written notice of (a) any material criminal or regulatory investigation, proceeding, action or audit involving the Company or any of its subsidiaries, (b) any event or occurrence with respect to the Company or any of its subsidiaries that would, or would reasonably be expected to, result in material adverse legal, regulatory or reputational consequences for the Company, its subsidiaries or owners, and (c) any regulatory, legal or internal control deficiencies at the Company or any of its subsidiaries which are material to the Company or any of its subsidiaries or owners, as identified by the Company, any of its subsidiaries, or any governmental entity having jurisdiction over Investors or any of its subsidiaries, whether as a result of an internal or external audit. The Company shall, and shall cause its subsidiaries to, take commercially reasonable actions to remedy on a timely basis any such investigation, proceeding, action, event, occurrence or deficiency. Subject to any confidentiality obligations owed by the Company to any third party or governmental body, the Company shall include in each such written notice a description of, and keep Investors

reasonably informed of such actions taken by the Company to resolve, any such investigation, proceeding, action, event, occurrence or deficiency.

B. Preferred Terms and/or Pricing

If the Customer and Company have an ongoing commercial relationship or contemplate a commercial relationship post-financing, there may be a negotiated term in the side letter regarding the Investor's rights to have preferential or most-favored pricing terms.

Any [products or services] provided by the Company to the Investor under [agreements], shall be at [rates/prices] that are, at minimum, as favorable as the [rates/prices] charged by the Company to [any of its other customers/partners], provided that the Investor is purchasing [products or services] substantially similar and in [substantially similar amounts] to those purchased by other [customers/partners]. Within ten (10) business days, upon written request of Investor, the Company shall certify in writing its compliance with the most favored nations obligations set forth in this provision. If the Company is unable to provide such written certification or if any audit of the Company identifies noncompliance of the Company with the most favored nations obligations set forth in this provision, then the Company shall promptly provide a refund of amounts of any overpayment by Investor and/or its affiliates (such amount, a "Refund"). In furtherance of the foregoing, in the event that the Company does not certify its compliance with this provision as required in this provision, Investor may, upon not less than fifteen (15) business days' notice to the Company audit the Company utilizing an unaffiliated professional audit firm ("Audit Firm") to audit the books and records of the Company at the Company's premises, during normal business hours, to assess the Company's compliance with the obligations set forth in this provision. If it is determined by the Audit Firm that the Company is not in compliance with its obligations under this provision, then the Company shall promptly provide the Refund and the Company shall reimburse Investor for 100% of the full amount of expenditures made by Investor in connection with engaging the Audit Firm to perform such audit. The Audit Firm shall limit its disclosure to Investor to information necessary to confirm compliance or identify the amount of the Refund.

B. Exclusivity or Right of Refusal

If the Customer and Company have an ongoing commercial relationship or contemplate a commercial relationship post-financing, there may be a negotiated term in the side letter regarding the Investor's rights to have first refusal rights in partnering with the Company pursuant to a teaming or other partnership agreement. Such term is more applicable when the Investor is interested in technology development or Company IP, rather than procurement agreements.

If the Company offers an opportunity to participate in a teaming agreement or partnership agreement related to the provision of the Company's products or services to [a government customer] (the "Teaming Opportunity"), then the Company shall first offer the opportunity to the Investor before any [other]. The company shall, within [amount] days, provide [written] notice to the Investor of any Teaming Opportunity that the Company intends to pursue and the Investor shall notify the Company [in writing] within [amount] days after its receipt of the Company's notice as to whether the Investor elects to discuss and negotiate the terms and conditions of the Teaming Opportunity. The parties agree to negotiate in good faith; provided, however, that if the parties have not executed an agreement within [amount] days of the Investor providing [written] notice of the intent to negotiate, then the Company may freely engage with any third party with respect to the Teaming Opportunity.

C. **Confidentiality/Public Announcement**

Investors may require that the Company not disclose the relationship with the Investor or to only do so under restricted conditions. The following terms are restricted only to communications regarding the relationship/investment with the specific Investor – not the financing or sale of equity to other investors. If such terms are included in a side letter, the individual(s) responsible for Company communications must be made aware of any restrictions to ensure ongoing positive relationships with the investor.

Option 1 [requiring consent]: The Company shall not refer to [Investor], directly or indirectly, in any [advertisement, publication, promotional materials, social media announcement, or news release], in connection with Investor's purchase of Series [class of shares] Shares unless otherwise required by law or with [Investor]'s prior [written] consent.

Option 2 [announcement under express conditions]: The Company may refer to [Investor] in connection with [Investor]'s relationship with the Company only if the Company and [Investor] mutually agree [in writing] to the publication of the existence of the parties' relationship. Communications will be compliant with this Section [section reference] only to the extent agreed upon by the parties.