

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **October 11, 2023**

AKERNA CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-39096

(Commission File Number)

83-2242651

(IRS Employer
Identification No.)

1550 Larimer Street, #246, Denver, Colorado

(Address of principal executive offices)

80202

(Zip Code)

Registrant's telephone number, including area code: **(888) 932-6537**

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

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	KERN	NASDAQ Capital Market
Warrants to purchase Common Stock	KERNW	NASDAQ Capital Market

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Amended and Restated Convertible Secured Promissory Note

In relation to the previously announced first amendment to the Securities Purchase Agreement dated September 28, 2023 by and between Akerna Corp., a Delaware corporation (“Akerna”), Akerna Canada Ample Exchange Inc. (“Akerna Exchange”) and MJ Acquisition Corp. (“MJA”), on October 11, 2023, Akerna issued an amended and restated convertible secured promissory note (“Amended and Restated Note”) to MJA which amends and restates the Secured Promissory Note dated April 28, 2023 by and between Akerna and MJA (the ‘Original Note’), whereby Akerna promises to pay to the order of MJA or its registered assigns the amount of \$1,500,000. The Amended and Restated Note amended the Original Note to:

- (A) increase the principal amount of the Original Note from \$1,000,000 to \$1,500,000;
- (B) provide for the forfeiture by MJA of the accrued and unpaid interest at the consummation of the transaction under the SPA; and
- (C) provide that contemporaneous with and immediately prior to the consummation of the transactions under the SPA provide that contemporaneous with and immediately prior to the consummation of the transactions under the SPA, the principal amount of the shall convert into such quantity of shares of common stock of the Company as equals (1) \$1,500,000, multiplied by (2) the 5-day volume weighted average price of the common stock of the Company as quoted on The Nasdaq Capital Market for the 5 trading days immediately preceding the date of the consummation of the transactions under the SPA; *provided however*, that in no case shall Akerna be required to issue to MJA such number of shares of common stock as would in the aggregate with all shares issued pursuant to the SPA and/or held or controlled by MJA exceed 19.99% of the number of issued and outstanding shares of common stock of the Seller on the date hereof without first obtaining the approval of stockholders of Akerna as required pursuant to the rules of the Nasdaq Stock Exchange.

Except as set forth above, no other amendments, revisions or additions were made to the Original Note and all terms, conditions, covenants, representations and warranties contained in the Original Note shall remain in full force and effect as disclosed in Item 1.01 of Akerna’s Current Report on Form 8-K as filed with the Commission on May 1, 2023, which disclosure is incorporated herein by reference.

Amended and Restated Security Agreement

Pursuant to the Amended and Restated Note, Akerna’s obligations under the Amended and Restated Note are to be secured pursuant to an Amended and Restated Security and Pledge Agreement entered into by and among Akerna, MJA and the other parties thereto dated October 11, 2023 (the “Amended and Restated Security Agreement”). The Amended and Restated Security Agreement amends and restated the Security Agreement entered into by and among Akerna, MJA and other parties thereto dated April 28, 2023 (the “Original Security Agreement”) to reflect the entry into the Amended and Restated Note and change reference therein from the Original Note to the Amended and Restated Note.

Except as set forth above, no other amendments, revisions or additions were made to the Original Security Agreement and all terms, conditions, covenants, representations and warranties contained in the Original Security Agreement shall remain in full force and effect as disclosed in Item 1.01 of Akerna’s Current Report on Form 8-K as filed with the Commission on May 1, 2023, which disclosure is incorporated herein by reference

Amended and Restated Guaranty

In connection to the Amended and Restated Note, certain subsidiaries of Akerna entered into an amended and restated guaranty agreement with MJA on October 11, 2023 (the “Amended and Restated Guaranty Agreement”) under which they will guarantee the obligations of the Company under the Amended and Restated Note.

Waiver

In connection to the Amended and Restated Note, the Amended and Restated Security Agreement, and the Amended and Restated Guaranty Agreement (collectively, “Amended and Restated New Note Transaction Documents”) and solely to permit Akerna to issue the Amended and Restated Note and execute and perform its obligations under the Amended and Restated New Note Transaction Documents and the Amended and Restated Subordination Agreement (as defined below), on October 11, 2023, each of the holders (each, a “Holder”) of Akerna’s senior secured convertible notes (the “2021 Notes”) issued pursuant to a Securities Purchase Agreement dated October 5, 2021 (“2021 SPA”) agreed to waive the prohibition on issuing indebtedness other than Permitted Indebtedness (as defined in the 2021 Notes) pursuant to Section 14(b) of the 2021 Notes and the prohibition permitting Liens (as defined in the 2021 Notes) to exist other than Permitted Liens (as defined in the 2021 Notes) pursuant to Section 14(c) of the 2021 Notes and Section 5(g)(v) of the 2021 SPA (the “Waiver”).

Amended and Restated Subordination and Intercreditor Agreement

In connection to the Amended and Restated New Note Transaction Documents, MJA, Akerna, and HT Investments MA LLC (the “Senior Agent”, together with the Holders, the “Senior Creditors”), as collateral agent under the 2021 SPA, each on behalf of the respective Holders, entered into an amended and restated subordination and intercreditor agreement dated October 11, 2023 (the “Amended and Restated Subordination Agreement”), whereby the parties agreed that the payment of any and all obligations, liabilities and indebtedness of every nature of Akerna, its applicable subsidiary and/or affiliates from time to time owed to MJA under Amended and Restated Subordinated Debt Documents (as defined in the Amended and Restated Subordination Agreement) will be subordinate and subject in right and time of payment, to the prior payment in full of all obligations, liabilities and indebtedness of every nature of Akerna, its applicable subsidiary and/or affiliates from time to time owed to any Senior Creditor under the Senior Debt Documents (as defined in the Amended and Restated Subordination Agreement).

The above descriptions of the material terms of the Amended and Restated Note, the Amended and Restated Security Agreement, the Amended and Restated Guaranty, the Waiver and the Amended and Restated Subordination Agreement (collectively, the “Transaction Documents”) are qualified in their entirety by reference to the full text of the Transaction Documents, which are filed as Exhibits 10.1 through 10.5 to this Current Report on Form 8-K and are incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information included in Item 1.01 of this Current Report on Form 8-K is also incorporated by reference into this Item 2.03 of this Current Report on Form 8-K.

Item 3.02 Unregistered Sale of Equity Securities

The disclosure set forth in Item 1.01 of this Current Report on Form 8-K is also incorporated herein by reference into this Item 3.02 of this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed as part of this report:

Exhibit Number	Description
10.1*	Amended and Restated Secured Promissory Note, dated October 11, 2023, by and among Akerna, Akerna Exchange, and MJA
10.2*	Amended and Restated Security and Pledge Agreement, by and among Akerna, MJA and the other parties thereto dated October 11, 2023
10.3	Amended and Restated Guaranty Agreement, by and among certain subsidiaries of Akerna and MJA, dated October 11, 2023
10.4	Amended and Restated Subordination and Intercreditor Agreement, by and among MJA, Akerna, and HT Investments MA LLC, dated October 11, 2023
10.5*	Form of Waiver, by and among Akerna and certain note holders, dated October 11, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

Additional Information and Where to Find It

This Current Report on Form 8-K may be deemed to be solicitation material with respect to the proposed transactions between Akerna and Gryphon Digital Mining, Inc. (“Gryphon”) and between Akerna and MJ Acquisition Corp. In connection with the proposed transactions, Akerna has filed relevant materials with the United States Securities and Exchange Commission, or the SEC, including a registration statement on Form S-4 that contains a prospectus and a proxy statement. Akerna will mail the proxy statement/prospectus to the Akerna stockholders, and the securities may not be sold or exchanged until the registration statement becomes effective. Investors and securityholders of Akerna and Gryphon are urged to read these materials because they will contain important information about Akerna, Gryphon and the proposed transactions. This Current Report on Form 8-K is not a substitute for the registration statement, definitive proxy statement/prospectus or any other documents that Akerna may file with the SEC or send to securityholders in connection with the proposed transactions. Investors and securityholders may obtain free copies of the documents filed with the SEC on Akerna’s website at www.akerna.com, on the SEC’s website at www.sec.gov or by directing a request to Akerna’s Investor Relations at (516) 419-9915.

This Current Report on Form 8-K is not a proxy statement or a solicitation of a proxy, consent or authorization with respect to any securities or in respect of the proposed transactions, and shall not constitute an offer to sell or the solicitation of an offer to sell or the solicitation of an offer to buy any securities, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

Participants in the Solicitation

Each of Akerna, Gryphon, MJ Acquisition Corp. and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Akerna in connection with the proposed transactions. Information about the executive officers and directors of Akerna are set forth in Akerna’s Definitive Proxy Statement on Schedule 14A relating to the 2022 Annual Meeting of Stockholders, filed with the SEC on April 19, 2022. Other information regarding the interests of such individuals, who may be deemed to be participants in the solicitation of proxies for the stockholders of Akerna, is set forth in the proxy statement/prospectus included in Akerna’s registration statement on Form S-4 as filed with the SEC on May 12, 2023, as last amended on September 7, 2023. You may obtain free copies of these documents as described above.

Cautionary Statements Regarding Forward-Looking Statements

This Current Report on Form 8-K contains forward-looking statements based upon the current expectations of Gryphon and Akerna. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation: (i) the risk that the conditions to the closing of the proposed transactions are not satisfied, including the failure to timely obtain stockholder approval for the transactions, if at all; (ii) uncertainties as to the timing of the consummation of the proposed transactions and the ability of each of Akerna, Gryphon and MJ Acquisition Co. to consummate the proposed merger or asset sale, as applicable; (iii) risks related to Akerna's ability to manage its operating expenses and its expenses associated with the proposed transactions pending closing; (iv) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed transactions; (v) the risk that as a result of adjustments to the exchange ratio, Akerna stockholders and Gryphon stockholders could own more or less of the combined company than is currently anticipated; (vi) risks related to the market price of Akerna's common stock relative to the exchange ratio; (vii) unexpected costs, charges or expenses resulting from either or both of the proposed transactions; (viii) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed transactions; (ix) risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance its business plan; (x) risks associated with the possible failure to realize certain anticipated benefits of the proposed transactions, including with respect to future financial and operating results and (xi) risks related to the Panel not granting additional time for Akerna to regain compliance with the listing rules and Akerna being suspended and delisted from The Nasdaq Capital Market. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties. These and other risks and uncertainties are more fully described in periodic filings with the SEC, including the factors described in the section titled "Risk Factors" in Akerna's Annual Report on Form 10-K for the year ended December 31, 2022 and Quarterly Report on Form 10-Q for the quarter ended June 30, 2023, each filed with the SEC, and in other filings that Akerna makes and will make with the SEC in connection with the proposed transactions, including the proxy statement/prospectus described under "Additional Information and Where to Find It." You should not place undue reliance on these forward-looking statements, which are made only as of the date hereof or as of the dates indicated in the forward-looking statements. Except as required by law, Akerna and Gryphon expressly disclaim any obligation or undertaking to update or revise any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

SIGNATURES

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

Dated: October 12, 2023

AKERNA CORP.

By: /s/ Jessica Billingsley

Name: Jessica Billingsley

Title: Chief Executive Officer

AMENDED AND RESTATED
CONVERTIBLE SECURED
PROMISSORY NOTE

\$1,500,000.00

Originally Issued on April 27, 2023
Amended and Restated October 11, 2023

This Amended and Restated Convertible Secured Promissory Note (the “*Note*”) is being issued in connection with the execution of Amendment Number One (the “*Amendment*”) dated September 28, 2023 to that certain Securities Purchase Agreement (the “*SPA*”) dated April 27, 2023 herewith between Akerna Corp., a Delaware corporation (the “*Company*”), Akerna Canada Ample Exchange Inc., an Ontario corporation (“*ExchangeCo*”), and MJ Acquisition Corp., a Delaware corporation (or its designee) (“*MJA*”).

1. Principal and Interest.

1.1 Amount. For value received, the Company hereby promises to pay to the order of MJA, or its registered assigns (collectively, the “*Holder*”) the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “*Loan*”).

1.2 Interest. This Note shall bear simple interest at the rate of ten percent (10%) per annum from the date of issuance until repayment of the Note. Interest on this Note shall be computed on the basis of a 365-day year and actual days elapsed. Interest on the initial \$1,000,000 amount of the Loan will bear interest from April 27, 2023 until repayment of the Note and interest on the subsequent \$500,000 amount of the Loan will bear interest from October 11, 2023 until repayment of the Note.

1.3 Maturity Date. The outstanding principal amount of and all accrued but unpaid interest on this Note (i.e., with respect to all Tranches) shall be due and payable on April 27, 2024 (the “*Maturity Date*”).

1.4 Prepayment. This Note, or a portion thereof, may be prepaid by the Company at any time without penalty, upon one (1) business day prior written notice from the Company to the Holder, specifying the intended date and amount of repayment. Any payments shall be applied first to accrued interest and then to principal.

1.5 Deemed Forfeiture and Conversion. All accrued and unpaid interest shall be deemed forfeited by Holder upon the consummation of the transactions contemplated under the SPA. Contemporaneous with and immediately prior to the consummation of the transactions under the SPA, the principal amount of the Loan shall automatically convert into such quantity of shares of common stock of the Company as equals (1) \$1,500,000, divided by (2) the 5-day volume weighted average price of the common stock of the Company as quoted on The Nasdaq Capital Market for the 5 trading days immediately preceding the date of the consummation of the transactions under the SPA (the “*Conversion Shares*”); *provided however*, that in no case shall the Holder be required to issue to the Buyer such number of Conversion Shares as would in the aggregate with all shares of common stock of the Company issued pursuant to the SPA and/or held or controlled by the Holder exceed 19.99% of the number of issued and outstanding shares of common stock of the Company on the date of the Amendment without first obtaining the approval of stockholders of the Company as required pursuant to the rules of the Nasdaq Stock Exchange. In connection with such conversion, the Company shall within two (2) Business Days deliver the Conversion Shares to the Holder promptly by delivering either a stock certificate in the name of the Holder or its nominee or a direct registration advice slip for an account in the name of the Holder or its nominee for the quantity of Conversion Shares issuable upon such conversion. In relation to the conversion, the Holder hereby makes and as of the date of such conversion will be deemed to have made the following representations and warranties to the Company:

(a) As of the date hereof, the Holder (i) is knowledgeable, sophisticated and experienced in making, and is qualified to make decisions with respect to, investments in Conversion Shares presenting an investment decision like that involved in the purchase of the Conversion Shares, including investments in securities issued by the Company and investments in comparable companies, and has requested, received, reviewed and considered all information it deemed relevant in making an informed decision to purchase the Conversion Shares; (ii) in connection with its decision to purchase the Conversion Shares, relied only upon the reports and filings of the Company made with the United States Securities and Exchange Commission (the “*SEC*”), other publicly available information including the risks and uncertainties discussed in the Company’s most recent annual and quarterly reports filed with the SEC and available on the Company’s profiles on EDGAR at www.sec.gov which risks and uncertainties are incorporated herein by reference, and the representations and warranties of the Company contained herein; (iii) is an “accredited investor” pursuant to Rule 501(a) of Regulation D under the Securities Act of 1933, as amended (the “*Securities Act*”); (iv) is acquiring the Conversion Shares for its own account for investment purposes only and with no present intention of distributing any of the Conversion Shares or any arrangement or understanding with any other persons regarding the distribution of the Conversion Shares in violation of the Securities Act or any applicable state securities laws; *provided, however*, that the Holder may at all times to sell or otherwise dispose of all or any part of such Conversion Shares in compliance with the Securities Act and any applicable state securities laws; and *provided, further*, that nothing contained herein shall be deemed a representation or warranty by the Holder to hold the Conversion Shares for any period of time; (v) has not been organized, reorganized or recapitalized specifically for the purpose of investing in the Conversion Shares; (vi) will not, directly or indirectly, offer, sell, pledge, transfer or otherwise dispose of (or solicit any offers to buy, purchase or otherwise acquire to take a pledge of) any of the Conversion Shares except in compliance with the Securities Act and United States state securities laws; (vii) understands that the Conversion Shares are being offered and sold to it in reliance upon specific exemptions from the registration requirements of the Securities Act and any applicable state securities laws, and that the Company is relying upon the truth and accuracy of, and the Holder’s compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Holder set forth herein in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the Conversion Shares; and (viii) understands that neither the SEC, or any United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Conversion Shares.

(b) The Holder acknowledges that the Conversion Shares have not been and will not be registered under the Securities Act and are “restricted securities” under Rule 144 of the Securities Act and must be held indefinitely unless subsequently registered under the Securities Act or sold pursuant to an available exemption therefrom. If the Holder is selling the Conversion Shares pursuant to Rule 144 promulgated under the Securities Act or pursuant to another exemption from registration under the Securities Act, the Company shall have received an opinion of counsel of recognized standing in form and substance reasonably satisfactory to the Company and the Transfer Agent that such sale may be made in compliance with the Securities Act. The Holder is aware of the provisions of Rule 144 promulgated under the Securities Act which provide a safe harbor for the limited resale of stock purchased in a private placement subject to the satisfaction of certain conditions (if applicable), including, among other things, the existence of a public market for the stock, the availability of certain current public information about the Company, the resale occurring after certain holding periods have been met, and for affiliates of the Company, the sale being conducted through a “broker’s transaction” or a transaction directly with a “market maker” and the number of shares of the stock being sold during any three-month period not exceeding specified limitations. The Holder acknowledges and understands that the Company may not be satisfying the current public information requirement of Rule 144 at the time the Purchaser wishes to sell the Shares and, if so, the Purchaser may be precluded from selling the Shares under Rule 144 even if the required holding period has been satisfied.

(c) The Holder acknowledges that certificates evidencing the Conversion Shares shall bear a restrictive legend in substantially the following form (and including related stock transfer instructions and record notations):

THESE SHARES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) OR ANY APPLICABLE STATE SECURITIES LAWS, AND, ACCORDINGLY, MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED, DIRECTLY OR INDIRECTLY, EXCEPT (A) TO THE COMPANY, (B) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, (C) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT, IF AVAILABLE, OR (D) PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND, IN EACH CASE, IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS OR BLUE SKY LAWS, AND IN CONNECTION WITH ANY SALE OR TRANSFER PURSUANT TO (C) OR (D) AS EVIDENCED BY A LEGAL OPINION OF COUNSEL OF RECOGNIZED STANDING IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY AND ITS TRANSFER AGENT.

(d) The Holder acknowledges that the conversion of the Loan amount into Conversion Shares is being made pursuant to Section 3(a)(9) of the Securities Act, which is an exemption from the registration requirements of the Securities Act.

(e) The Holder, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so as to be capable of evaluating the merits and risks of the prospective investment in the Conversion Shares, and has so evaluated the merits and risks of such investment. The Holder is able to bear the economic risk of an investment in the Conversion Shares and, at the present time, is able to afford a complete loss of such investment.

1.6 Priority.

(a) Other than payment of this Note pursuant to Section 1.5 or 1.6(b), repayment by the Company of this Note, including all accrued and unpaid interest, shall be subordinate in all respects to the repayment of, and the priority security interests of, the indebtedness of the Company owed to High Trail Investments ON LLC and Alto Opportunity Master Fund, SPC - Segregated Master Portfolio B (the “**Holder**s”) under the Company’s senior secured convertible notes dated October 5, 2021 (the “**Convertible Notes**”) (including all principal, interest, if any, fees and all other amounts due pursuant to the Convertible Notes and related ancillary documents) purchased pursuant to that certain securities purchase agreement dated October 5, 2021 by and among the Company and the Holders and secured by that certain security agreement dated October 5, 2021 by and among the Company, certain of its subsidiaries and MT Investment MA LLC as the collateral agent for the Holders.

(b) If the Shares (as defined in the SPA) (the “**Shares**”) or the Membership Interests (as defined in the SPA) (the “**Membership Interests**”) are not acquired by MJA or its designee(s), the Company shall require any party(ies) that subsequently acquire(s) the Shares and/or the Membership Interests prior to the Maturity Date to repay the Note, including all accrued and unpaid interest, on the Maturity Date, with such repayment obligation to be the senior-most payment obligation of any such party(ies). For the avoidance of doubt, the Company shall remain liable to repay the Note, including all accrued and unpaid interest, notwithstanding the foregoing.

2. Grant of Security Interest. The Company's obligations under this Note are to be secured pursuant to that separate Amended and Restated Security and Pledge Agreement by and among the Company, Holder and the other parties thereto dated even date herewith (the "**Amended and Restated Security Agreement**").

3. Events of Default. If there shall be any Event of Default (as defined below), at the option of the Holder and upon written notice to the Company by the Holder (which election and notice shall not be required in the case of an Event of Default under clauses (b) or (c) below), this Note shall accelerate and the entire principal amount of, and all accrued but unpaid interest on, this Note shall become due and payable. The occurrence of any one or more of the following shall constitute an "**Event of Default**": (a) the Company breaches the SPA or any of the Ancillary Documents (as defined in the SPA) and does not cure such breach within ten (10) days after written notice thereof has been given by or on behalf of the Holder to the Company; (b) the Company files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; (c) an involuntary petition is filed against the Company (unless such petition is dismissed or discharged within ninety (90) days under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of the Company; or (d) the Company is in material breach of any of its representations or covenants in this Note and, in the case of covenants, does not cure such breach within ten (10) days after written notice thereof has been given by or on behalf of the Holder to the Company.

4. Representations and Warranties of the Company. The Company hereby represents and warrants to the Holder that, except as set forth in the Schedule of Exceptions (the "**Schedule of Exceptions**") attached to this Note as **Exhibit A**, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the statements in the following paragraphs of this Section 4 are all true and complete.

4.1 Organization, Good Standing and Qualification. The Company has been duly incorporated and organized, and is validly existing in good standing, under the laws of the State of Delaware. The Company has the corporate power and authority to own and operate its properties and assets and to carry on its business as currently conducted and as presently proposed to be conducted. The Company is duly qualified to transact business as a foreign corporation and is in good standing under the laws of each jurisdiction in which the failure to so qualify would have a Material Adverse Effect. "**Material Adverse Effect**" means a material adverse effect on the business, assets (including intangible assets), liabilities, property, financial condition or results of operations of the Company.

4.2 Due Authorization. All corporate action on the part of the Company's board of directors and stockholders necessary for the authorization, execution, delivery of, and the performance of all obligations of the Company under this Note has been taken or will be taken prior to the funding of the Loan. This Note, when executed and delivered by the Company, will constitute, valid and legally binding obligations of the Company, enforceable against the Company in accordance with its terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (b) the effect of rules of law governing the availability of equitable remedies.

4.3 Corporate Power. The Company has the corporate power and authority to execute and deliver this Note, to issue to the Holder the Note to be purchased by the Holder hereunder, and to carry out and perform all its obligations under the Notes.

4.4 Litigation. There is no Action pending, or to the Company's knowledge, currently threatened (a) against the Company or (b) against any consultant, officer, director or Key Employee of the Company arising out of his or her consulting, employment or board relationship with the Company or that could otherwise reasonably be expected to have individually and in the aggregate a Material Adverse Effect. The foregoing includes, without limitation, Actions pending or overtly threatened involving the prior employment or consultancy of any of the Company's consultants, employees, officers, directors, Key Employees, or their services provided in connection with the Company's business. Neither the Company nor, to the Company's knowledge, any of its consultants, officers, directors or Key Employees is a party or is named as subject to the provisions of any order, writ, injunction, judgment or decree of any court or government body (in the case of consultants, officers, directors or Key Employees, such as would affect the Company) that could reasonably be expected to have individually and in the aggregate a Material Adverse Effect. There are no material Actions by the Company pending or that the Company intends to initiate. "**Action**" means any action, suit, proceeding, arbitration, mediation, complaint, claim, charge or, to the Company's knowledge, investigation, in each case, before any court, arbitrator, mediator or governmental body. "**Key Employees**" means any executive-level employee (including division director and vice president-level positions).

4.5 Financial Statements. The Company has delivered to the Holder the financial statements for MJ Freeway, LLC (including revenue and profitability metrics relating to Leaf Data Systems) and Ample Organics Inc. for the fiscal quarter ended December 31, 2022 and the prior 7 fiscal quarters (such financial statements, collectively, the "**Financial Statements**"). The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated, except that the Financial Statements may not contain all footnotes required by generally accepted accounting principles. The Financial Statements fairly present in all material respects the financial condition and operating results MJ Freeway, LLC and Ample Organics Inc., respectively, as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments. Except as set forth in the Financial Statements, MJ Freeway, LLC and Ample Organics Inc., respectively, have no material liabilities or obligations, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to December 31, 2022 (ii) obligations under contracts and commitments incurred in the ordinary course of business and (iii) liabilities and obligations of a type or nature not required under generally accepted accounting principles to be reflected in the Financial Statements, which, in all such cases, individually and in the aggregate would not have a Material Adverse Effect.

4.6 Confidential Information and Invention Assignment Agreements. Each current and former employee, consultant and officer of MJ Freeway, LLC and Ample Organics Inc. has executed an agreement with such entity regarding confidentiality and proprietary information substantially in the form or forms delivered to the Holder. No current or former employee or consultant has excluded works or inventions from his or her assignment of inventions pursuant to such agreement. To the Company's knowledge, no current or former employee or consultant is in violation of such agreement.

4.7 Compliance with Other Instruments. The Company, MJ Freeway, LLC and Ample Organics Inc. is not in violation or default (a) of any provisions of its respective organizational documents (e.g., charter, bylaws, operating agreement), (b) of any judgment, order, writ or decree of any court or governmental entity, (c) under any agreement, privacy policy, instrument, contract, lease, note, indenture, mortgage or purchase order to which it is a party or by which it is bound, or (d) of any provision of federal or state statute, rule or regulation applicable to such entity (including without limitation those related to privacy, personally identifiable information or export control), except in relation to (c) and (d) such as would not reasonably be expected to have individually and in the aggregate a Material Adverse Effect. The execution, delivery and performance of this Note or the SPA will not result in any such material violation or default, or constitute, with or without the passage of time and/or giving of notice, either (i) a default under any such judgment, order, writ, decree, agreement, instrument, contract, lease, note, indenture, mortgage or purchase order or (ii) an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company, MJ Freeway, LLC or Ample Organics Inc., or the suspension, revocation, forfeiture, or nonrenewal of any material permit or license applicable to any of them. The execution, delivery and performance of the Note and the SPA, and the consummation of the transactions contemplated by the Note and SPA will not result in any acceleration of benefits or obligations, with or without the passage of time and giving of notice, under any such judgment, order, writ, decree, agreement, instrument, contract, lease, note, indenture, mortgage or purchase order.

4.8 Disclosure. No representation or warranty of the Company contained in this Note, as qualified by the Schedule of Exceptions, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

5. Representations and Warranties of the Holder. The Holder hereby represents and warrants to the Company that the statements in the following paragraphs of this Section 5 are all true and complete.

5.1 Authorization. The Holder has full power and authority to enter into this Note.

5.2 Purchase Entirely for Own Account. By the Holder's execution of this Note, the Holder hereby confirms that the Note will be acquired for investment for the Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. The Holder does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation in any of the Note to any third person.

5.3 No Solicitation. At no time was the Holder presented with or solicited by any publicly issued or circulated newspaper, mail, radio, television or other form of general advertising or solicitation in connection with the offer, sale and purchase of the Note.

6. General Provisions.

6.1 Governing Law; Venue. This Note shall be governed by and construed under the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Section 10.10(b) and (c) of the SPA are hereby incorporated herein by reference, *mutatis mutandis*.

6.2 Survival of Warranties. The warranties, representations and covenants of the Company and the Holder contained in or made pursuant to this Note shall survive the execution and delivery of this Note.

6.3 Waivers. The Company and all endorsers of this Note hereby waive notice, presentment, protest and notice of dishonor.

6.4 Assignment. The rights and obligations of the Company and the Holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties. Effective upon any such assignment, any party to whom such rights, interests and obligations were assigned by the Holder shall have all of the Holder's rights, interests and obligations hereunder as if such party were the original Holder of this Note.

6.5 Amendments and Waivers. Any term of this Note may be amended and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holder of the Note. Any amendment or waiver so effected shall be binding upon the holder of the Note and the Company.

6.6 Notices. Unless otherwise provided, for a notice or other communications under this Note to be valid, it must be in writing and delivered via email or by globally recognized express delivery service (with a required email copy, receipt of which need not be acknowledged) to the other party at the address listed after its signature on the signature page hereto. Any such notice or communication will be deemed to have been delivered and received (1) in the case of email, on the date that the recipient acknowledges having received the email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this section and (2) in the case of a globally recognized express delivery service, on the business day that receipt by the addressee is confirmed pursuant to the service’s systems. Either party may update this address for notice by giving the other party written notice of the new address.

6.7 Usury. This Note is hereby expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Holder hereunder exceed that permissible under applicable law. If at any time the performance of any provision of this Note involves a payment exceeding the limit that may be validly charged under applicable law, then the obligation to be performed shall be automatically reduced to such limit.

6.8 Issue Date. The provisions of this Note shall be construed and shall be given effect in all respects as if this Note had been issued and delivered by the Company on the earlier of the date hereof or the date of issuance of any Note for which this Note is issued in replacement.

6.9 Titles and Subtitles. The titles and subtitles used herein are used for convenience only and are not to be considered in construing or interpreting this Note.

6.10 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party hereto, upon any breach or default of any other party under this Note shall impair any such right, power or remedy of such non-defaulting party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Note or any waiver on the part of any party of any provisions or conditions of this Note must be made in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Note or by law or otherwise afforded to any party, shall be cumulative and not alternative.

6.11 Severability. If any provision of this Note is held to be illegal or unenforceable under applicable law, such provision shall be excluded from this Note and the balance of this Note shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

6.12 Counterparts; Electronic Signatures. This Note 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. Further, this Note may be executed and delivered by electronic means (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docuSign.com), and upon such delivery the electronic signature will be deemed to have the same effect as if the original signature had been delivered to the other party. Holder shall not be required to produce an original signature in order to demand repayment of this Note, including all accrued and unpaid interest.

6.13 Attorneys' Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of this Note, the prevailing party shall be entitled to reasonable attorneys' fees, costs and disbursements in addition to any other relief to which such party may be entitled.

6.14 Entire Agreement. This Note, together with all exhibits and schedules hereto, shall constitute the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede any and all prior negotiations, correspondence, agreements, understandings duties or obligations between any of the parties with respect to the subject matter hereof.

6.15 Costs, Expenses. Each party shall be responsible for its costs and expenses incurred in connection with the preparation, execution and delivery of this Note.

[remainder of page intentionally left blank]

The parties have executed this **AMENDED AND RESTATED SECURED PROMISSORY NOTE** as of the date first noted above.

Akerna Corp.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer
Address: 1550 Larimer Street #246
Denver, Colorado 80202
Email: jlb@akerna.com

MJ Acquisition Corp.

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative
Address: 21550 Biscayne Blvd, Suite 400
Aventura, FL 33180
Email: legal.mjac@gmail.com

AMENDED AND RESTATED SECURITY AND PLEDGE AGREEMENT

AMENDED AND RESTATED SECURITY AND PLEDGE AGREEMENT, dated as October 11, 2023 (this “**Agreement**”), made by Akerna Corp., a Delaware corporation, with offices located at 1550 Larimer Street, #246, Denver, CO 80202 (the “**Company**”), and each of the undersigned direct and indirect Subsidiaries of the Company from time to time (each a “**Grantor**” and together with the Company, collectively, the “**Grantors**”), in favor of MJ Acquisition Corp. (the “**Secured Party**”).

WITNESSETH:

WHEREAS, the Company is party to that certain Amended and Restated Secured Promissory Note, dated as of October 11, 2023 (as amended, restated, extended, replaced or otherwise modified from time to time, the “**Note**”) pursuant to which the Company received a loan from the Secured Party in the amount of \$1,500,000;

WHEREAS, certain Grantors (other than the Company) from time to time (each a “**Guarantor**” and collectively, the “**Guarantors**”) may execute and deliver one or more guarantees (each, a “**Guaranty**” and collectively, the “**Guaranties**”) in form and substance acceptable to and in favor of the Secured Party, with respect to the Company’s obligations under the Note;

WHEREAS, in connection with the execution of the Note, the Secured Party requires Grantors to execute and deliver to the Secured Party this Agreement providing for the grant to the Secured Party of a valid, enforceable, and perfected security interest in all personal property of each Grantor to secure all of the Company’s obligations under the Note and the Guarantors’ obligations under the Guaranties, as applicable; and

WHEREAS, the Grantors are Affiliates that are part of a common enterprise such that each Grantor will derive substantial direct and indirect financial and other benefits from the consummation of the transactions contemplated under the Note and, accordingly, the consummation of such transactions are in the best interests of each Grantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Secured Party to loan funds to the Company pursuant to the Note, each Grantor agrees with the Secured Party as follows:

SECTION 1. Definitions.

(a) Reference is hereby made to the Note for a statement of the terms thereof. All terms used in this Agreement and the recitals hereto which are defined in the Note or in the Code (as defined below), and which are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein which are defined in the Code on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of the Code except as the Secured Party may otherwise reasonably determine.

(b) The following terms shall have the respective meanings provided for in the Code: “Accounts”, “Account Debtor”, “Cash Proceeds”, “Certificate of Title”, “Chattel Paper”, “Commercial Tort Claim”, “Commodity Account”, “Commodity Contracts”, “Deposit Account”, “Documents”, “Electronic Chattel Paper”, “Equipment”, “Fixtures”, “General Intangibles”, “Goods”, “Instruments”, “Inventory”, “Investment Property”, “Letter-of-Credit Rights”, “Noncash Proceeds”, “Payment Intangibles”, “Proceeds”, “Promissory Notes”, “Security”, “Record”, “Security Account”, “Software”, and “Supporting Obligations”.

(c) As used in this Agreement, the following terms shall have the respective meanings indicated below, such meanings to be applicable equally to both the singular and plural forms of such terms:

“**Affiliate**” shall have the meaning given to such term in the Notes.

“**Bankruptcy Code**” means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in The City of New York generally are open for use by customers on such day.

“**Capital Stock**” means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not a corporation, an individual, a trust, or a Governmental Authority, any and all partnership, membership or other equity interests of such Person, if any.

“**Closing Date**” means the date hereof.

“**Code**” means Articles 8 or 9 of the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “Code” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“**Collateral**” shall have the meaning set forth in Section 2(a) of this Agreement.

“**Secured Party**” shall have the meaning set forth in the preamble hereto.

“**Company**” shall have the meaning set forth in the preamble hereto.

“**Controlled Account Agreement**” means a deposit account control agreement or securities account control agreement with respect to a Pledged Account, in form and substance satisfactory to the Secured Party, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

“**Controlled Accounts**” means the Deposit Accounts, Commodity Accounts, Securities Accounts, and/or Foreign Currency Controlled Account of the Grantors listed on Schedule IV attached hereto.

“**Copyright Licenses**” means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to use or sell any works covered by any Copyright (including, without limitation, all Copyright Licenses set forth in Schedule II hereto).

“**Copyrights**” means all domestic and foreign copyrights, whether registered or not, including, without limitation, all copyright rights throughout the universe (whether now or hereafter arising) in any and all media (whether now or hereafter developed), in and to all original works of authorship fixed in any tangible medium of expression, acquired or used by any Grantor (including, without limitation, all copyrights described in Schedule II hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Copyright Office or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, divisions, continuations, continuations in part and extensions or renewals thereof.

“**Domestic Subsidiary**” means any Subsidiary other than a Foreign Subsidiary.

“**Event of Default**” shall have the meaning set forth in Section 3 of the Note.

“**Excluded Collateral**” means: (a) the voting Capital Stock of any Foreign Subsidiary to the extent that (x) such Capital Stock represents more than 65% of the issued and outstanding voting Capital Stock of such Foreign Subsidiary and (y) pledging more than 65% of the total outstanding voting Capital Stock of such Foreign Subsidiary would result in an adverse tax consequence to a Grantor; and (b) any License which by its terms would be invalidated by the applicable Grantor’s grant of a security interest in or Lien upon such License after giving effect to the applicable anti-assignment provisions of the Code and other applicable law and other than Proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Code or other applicable law notwithstanding such prohibition; provided, however, “Excluded Collateral” shall not include any Proceeds, products, substitutions or replacements of any Excluded Collateral (unless such Proceeds, products, substitutions or replacements would constitute Excluded Collateral).

“**Excluded Subsidiary**” means each of Solo Sciences Inc., Trellis Solutions Inc., and Viridian Sciences Inc. provided, that any such entity shall cease to be an Excluded Subsidiary hereunder at any time such Excluded Subsidiary ceases its current process of winding-up without having completed such process and incurs any liabilities or obtains any material assets.

“**Foreign Currency Controlled Accounts**” means any Controlled Account of the Company or its Subsidiaries holding non-United States dollar deposits which non-United States dollar deposits are in excess of 50% of all deposits in such Controlled Account.

“**Foreign Subsidiary**” means any Subsidiary of a Grantor organized under the laws of a jurisdiction other than the United States, any of the states thereof, Puerto Rico or the District of Columbia.

“GAAP” means U.S. generally accepted accounting principles consistently applied.

“Governmental Authority” means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guaranteed Obligations” shall have the meaning set forth in Section 2 of each Guaranty.

“Guarantor” or “Guarantors” shall have the meaning set forth in the recitals hereto.

“Guaranty” or “Guaranties” shall have the meaning set forth in the recitals hereto.

“HT Investments” means HT Investments MA LLC.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” means, collectively, all intellectual property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, under the applicable laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) Trademarks; (b) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority, web addresses, web pages, websites and related content; (c) any accounts with LinkedIn, Twitter, Instagram, Facebook and other social media companies and the content found thereon (to the extent that such accounts and content are transferable pursuant to the terms, conditions, and policies of each applicable social media platform); (d) Copyrights; (e) Patents; and (f) business and technical information, databases, data collections and other confidential and proprietary information and all rights therein.

“Intellectual Property Security Agreement” means the Intellectual Property Security Agreement required to be delivered pursuant to Section 5(h)(i) of this Agreement, in the form attached hereto as Exhibit A.

“Licenses” means, collectively, the Copyright Licenses, the Trademark Licenses and the Patent Licenses.

“Lien” means any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance upon or in any property or assets.

“Note” shall have the meaning set forth in the recitals hereto.

“Obligations” shall have the meaning set forth in Section 3 of this Agreement.

“**Paid in Full**” or “**Payment in Full**” means the indefeasible payment in full in cash of all of the Obligations.

“**Patent Licenses**” means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensee or licensor and providing for the grant of any right to manufacture, use or sell any invention covered by any Patent (including, without limitation, all Patent Licenses set forth in Schedule II hereto).

“**Patents**” means all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how, formulae, rights of publicity and other general intangibles of like nature, now existing or hereafter acquired (including, without limitation, all domestic and foreign letters patent, design patents, utility patents, industrial designs, inventions, trade secrets, ideas, concepts, methods, techniques, processes, proprietary information, technology, know-how and formulae described in Schedule II hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office, or in any similar office or agency of the United States or any other country or any political subdivision thereof), and all reissues, reexaminations, divisions, continuations, continuations in part and extensions or renewals thereof.

“**Perfection Requirement**” or “**Perfection Requirements**” shall have the meaning set forth in Section 4(j), of this Agreement.

“**Permitted Liens**” means (i) any Lien for taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, (ii) any statutory Lien arising in the ordinary course of business by operation of law with respect to a liability that is not yet due or delinquent, (iii) any Lien created by operation of law, such as materialmen’s liens, mechanics’ liens and other similar liens, arising in the ordinary course of business with respect to a liability that is not yet due or delinquent or that are being contested in good faith by appropriate proceedings, (iv) Liens (A) upon or in any equipment acquired or held by the Company or any of its Subsidiaries to secure the purchase price of such equipment or Indebtedness incurred solely for the purpose of financing the acquisition or lease of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment, in either case, with respect to indebtedness in an aggregate amount not to exceed \$100,000, (v) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clause (iv) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness being extended, renewed or refinanced does not increase, (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payments of custom duties in connection with the importation of goods, and (vii) Liens in favor of HT Investments as in effect as of the date hereof or as may go into effect subsequent to the date hereto by operation of the provisions of that certain amended and restated security agreement dated October 5, 2021 by and between the Company, certain grantors thereunder and HT Investments and that certain intellectual property security agreement dated October 5, 2021. by and between the Company, certain grantors thereunder and HT Investments.

“**Person**” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

“**Pledged Accounts**” means all of each Grantor’s right, title and interest in all of its Deposit Accounts, Commodity Accounts and Securities Accounts (in all cases, including, without limitation, all Controlled Accounts and Foreign Currency Control Accounts).

“**Pledged Entity**” means, each Person listed from time to time on Schedule IV hereto as a “Pledged Entity,” together with each other Person, any right in or interest in or to all or a portion of whose Capital Stock is acquired or otherwise owned by a Grantor after the date hereof.

“**Pledged Equity**” means all of each Grantor’s right, title and interest in and to all of the Capital Stock of any Subsidiary now or hereafter owned by such Grantor, regardless of class or designation, including all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Securities and/or Capital Stock, the right to receive any certificates representing any of the Securities and/or Capital Stock, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof, and the right to receive dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing.

“**Pledged Operating Agreements**” means all of each Grantor’s rights, powers and remedies under the limited liability company operating agreements of each of the Pledged Entities that are limited liability companies, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

“**Pledged Partnership Agreements**” means all of each Grantor’s rights, powers, and remedies under the partnership agreements of each of the Pledged Entities that are partnerships, as may be amended, modified, supplemented, extended, renewed, restated or replaced from time to time.

“**Subsidiary**” and “**Subsidiaries**” means any Person (other than an Excluded Subsidiary) in which the Company, directly or indirectly, (I) owns more than 50% of the outstanding capital stock, any equity or similar interest of such Person or (II) controls all or substantially all of the business, operations or administration of such Person.

“**Trademark Licenses**” means all licenses, contracts or other agreements, whether written or oral, naming any Grantor as licensor or licensee and providing for the grant of any right concerning any Trademark, together with any goodwill connected with and symbolized by any such licenses, contracts or agreements and the right to prepare for sale or lease and sell or lease any and all Inventory now or hereafter owned by any Grantor and now or hereafter covered by such licenses, contracts or agreements (including, without limitation, all Trademark Licenses described in Schedule II hereto).

“**Trademarks**” means all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a’s, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers and all general intangibles of like nature, now or hereafter owned, adopted, acquired or used by any Grantor (including, without limitation, all domestic and foreign trademarks, service marks, collective marks, certification marks, trade names, business names, d/b/a’s, assumed names, Internet domain names, trade styles, designs, logos and other source or business identifiers described in Schedule II hereto), all applications, registrations and recordings thereof (including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof), and all reissues, extensions or renewals thereof, together with all goodwill of the business symbolized by such marks and all customer lists, formulae and other Records of any Grantor relating to the distribution of products and services in connection with which any of such marks are used; provided that “Trademarks” shall not include any intent-to-use trademark application to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law.

“**Transaction Documents**” mean this Agreement, the Note and each Guaranty.

SECTION 2. Grant of Security Interest.

(a) As collateral security for the due and punctual payment and performance of all of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Secured Party, and grants to the Secured Party, a continuing security interest in, all personal property and assets of such Grantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible (collectively, the “**Collateral**”), including, without limitation, the following:

- (i) all Accounts;
- (ii) all Chattel Paper (whether tangible or Electronic Chattel Paper);
- (iii) all Commercial Tort Claims, including, without limitation, those specified on Schedule VI hereto;
- (iv) all Documents;
- (v) all Equipment;
- (vi) all Fixtures;
- (vii) all General Intangibles (including, without limitation, all Payment Intangibles);
- (viii) all Goods;
- (ix) all Instruments (including, without limitation, all Promissory Notes and each certificated Security);
- (x) all Inventory;

- (xi) all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity, Pledged Operating Agreements and Pledged Partnership Agreements);
- (xii) all Intellectual Property and all Licenses;
- (xiii) all Letter-of-Credit Rights;
- (xiv) all Pledged Accounts, all cash and other property from time to time deposited therein, and all monies and property in the possession or under the control of the Secured Party or any Affiliate, representative, agent or correspondent of the Secured Party;
- (xv) all Supporting Obligations;
- (xvi) all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 2(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, desks, cards, Software, data and computer programs in the possession or under the control of any Grantor or any other Person from time to time acting for any Grantor, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2(a) or are otherwise necessary or helpful in the collection or realization thereof; and
- (xvii) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral; in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

(b) Notwithstanding anything herein to the contrary, the term "**Collateral**" shall not include any Excluded Collateral.

(c) Each Grantor agrees not to further encumber, or permit any other Lien (subject to Permitted Liens) to exist that encumbers, any of its Copyrights, Copyright applications, Copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any Licenses, Patents, Patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, Trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Grantor connected with and symbolized thereby, know-how, operating manuals, trade secret rights, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing, in each case without the Secured Party's prior written consent (which consent may be withheld or given in the Secured Party's sole discretion).

(d) The Grantors agree that the pledge of the shares of Capital Stock acquired by a Grantor of any and all Persons now or hereafter existing who is a Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges or other similar agreements or instruments, executed and delivered by the relevant Grantors in favor of the Secured Party, which pledge agreements will provide for the pledge of such shares of Capital Stock in accordance with the laws of the applicable foreign jurisdiction. With respect to such shares of Capital Stock, the Secured Party may, at any time and from time to time, in its sole discretion, take such actions in such foreign jurisdictions that will result in the perfection of the Lien created in such shares of Capital Stock.

(e) In addition, to secure the prompt and complete payment, performance and observance of the Obligations and in order to induce the Secured Party as aforesaid, each Grantor hereby grants to the Secured Party a right of set-off against the property of such Grantor held by the Secured Party consisting of Collateral now or hereafter in the possession or custody of or in transit to the Secured Party, for any purpose, including safekeeping, collection or pledge, for the account of such Grantor, or as to which such Grantor may have any right or power; provided that such right shall only be exercised after an Event of Default has occurred and is continuing.

SECTION 3. Security for Obligations. The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether direct or indirect, absolute or contingent, and whether now existing or hereafter incurred (collectively, the “**Obligations**”):

(a) (i) the payment by the Company and each Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Transaction Documents, and (ii) in the case of the Guarantors, the payment by such Guarantors, as and when due and payable of all Guaranteed Obligations under the Guaranties, including, without limitation, in both cases, (A) all principal of, interest, make-whole and other amounts due and payable under the Note (including, without limitation, all interest, make-whole and other amounts that accrue after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest is enforceable or is allowable in such Insolvency Proceeding), and (B) all fees, interest, premiums, penalties, contract causes of action, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under the Transaction Documents; and

(b) the due performance and observance by each Grantor of all of its other obligations from time to time existing in respect of any of the Transaction Documents.

SECTION 4. Representations and Warranties. The Grantors jointly and severally represent and warrant as follows:

(a) Schedule I hereto sets forth (i) the exact legal name of each Grantor, and (ii) the state of incorporation, organization or formation and the organizational identification number of each Grantor in such state. The information set forth in Schedule I hereto with respect to such Grantor is true and accurate in all respects. Such Grantor has not previously changed its name (or operated under any other name) within the past five years, jurisdiction of organization or organizational identification number from those set forth in Schedule I hereto except as disclosed in Schedule I hereto.

(b) There is no pending or, to its knowledge, written notice threatening any action, suit, proceeding or claim affecting any Grantor before any Governmental Authority or any arbitrator, or any order, judgment or award issued by any Governmental Authority or arbitrator, in each case, that may materially and adversely affect the grant by any Grantor, or the perfection, of the security interest purported to be created hereby in the Collateral, or the exercise by the Secured Party of any of its rights or remedies hereunder.

(c) All federal, state and local tax returns and other reports required by applicable law to be filed by any Grantor have been filed, or extensions have been obtained, and all taxes, assessments and other governmental charges imposed upon any Grantor or any property of any Grantor (including, without limitation, all federal income and social security taxes on employees' wages) and which have become due and payable on or prior to the date hereof have been paid, except to the extent contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) All Equipment, Fixtures, Goods and Inventory of each Grantor now existing are, and all Equipment, Fixtures, Goods and Inventory of each Grantor hereafter existing will be, located and/or based at the addresses specified therefor in Schedule III hereto, except that each Grantor will give the Secured Party written notice of any change in the location of any such Collateral within 20 days of such change, other than transport for sale, delivery, or repair in the ordinary course of business or to locations set forth on Schedule III hereto. Each Grantor's principal place of business and chief executive office, the place where each Grantor keeps its Records concerning the Collateral and all originals of all Chattel Paper are located and will continue to be located at the addresses specified therefor in Schedule III hereto. None of the Accounts is or will be evidenced by Promissory Notes or other Instruments.

(e) Set forth in Schedule IV hereto is a complete and accurate list, as of the date of this Agreement, of (i) each Promissory Note, Security (other than any Security held in the Securities Account) and other Instrument owned by each Grantor, (ii) each Pledged Account of each Grantor, together with the name and address of each institution at which each such Pledged Account is maintained, the account number for each such Pledged Account and a description of the purpose of each such Pledged Account and (iii) the name of each Foreign Currency Controlled Account, together with the name and address of each institution at which each such Foreign Currency Controlled Account is maintained and the amount of cash or cash equivalents held in each such Foreign Currency Controlled Account. Set forth in Schedule II hereto is a complete and correct list of each trade name used by each Grantor and the name of, and each trade name used by, each Person from which each Grantor has acquired any substantial part of the Collateral.

(f) Each Grantor has delivered to the Secured Party complete and correct copies of each License described in Schedule II hereto, including all schedules and exhibits thereto, which represent all of the Licenses of the Grantors existing on the date of this Agreement. Each such License sets forth the entire agreement and understanding of the parties thereto relating to the subject matter thereof, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby or the rights of such Grantor or any of its Affiliates in respect thereof. Each material License now existing is, and any material License entered into in the future will be, the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms. To its knowledge, no default under any material License by any such party has occurred, nor does any defense, offset, deduction or counterclaim exist thereunder in favor of any such party.

(g) Each Grantor owns and controls, or otherwise possesses adequate rights to use, all of its Intellectual Property, which is the only Intellectual Property necessary to conduct its business in substantially the same manner as conducted as of the date hereof. Schedule II hereto sets forth a true and complete list of all Intellectual Property and Licenses owned or used by each Grantor as of the date hereof, and applications for grant or registration of Intellectual Property. To the knowledge of each Grantor, all such Intellectual Property of such Grantor is subsisting and in full force and effect, has not been adjudged invalid or unenforceable, is valid and enforceable and has not been abandoned in whole or in part, except for Intellectual Property that, in the reasonable business judgment of such Grantor, is not necessary to conduct its business. Except as set forth in Schedule II, no such Intellectual Property is the subject of any licensing or franchising agreement. Except as set forth in Schedule II, no Grantor has any knowledge of any infringement upon or conflict with the Patent, Trademark, Copyright, trade secret rights of others and, each Grantor is not now infringing or in conflict with any Patent, Trademark, Copyright, trade secret or similar rights of others, and to the knowledge of each Grantor, no other Person is now infringing or in conflict in any material respect with any such properties, assets and rights owned or used by each Grantor. No Grantor has received any written notice that it is violating or has violated the Trademarks, Patents, Copyrights, inventions, trade secrets, proprietary information and technology, know-how, formulae, rights of publicity or other intellectual property rights of any third party.

(h) Each Grantor is and will be at all times the sole and exclusive owner of the Collateral pledged by such Grantor hereunder free and clear of any Liens, except for Permitted Liens thereon. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in the recording or filing office of the jurisdiction of incorporation of the applicable Grantor except such as (i) may have been filed in favor of the Secured Party relating to the Transaction Documents, and (ii) are securing Permitted Liens as of the date hereof.

(i) The exercise by the Secured Party of any of its rights and remedies hereunder will not contravene any law or any contractual restriction binding on or otherwise affecting each Grantor or any of its properties and will not result in or require the creation of any Lien upon or with respect to any of its properties.

(j) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority, is required for (i) the grant by each Grantor, or the perfection, of the security interest purported to be created hereby in the Collateral, or (ii) the exercise by the Secured Party of any of its rights and remedies hereunder, except for (A) the filing under the Code as in effect in the applicable jurisdiction of the financing statements described in Schedule V hereto, all of which financing statements will be filed by the Secured Party on or about the date hereof, (B) with respect to all Pledged Accounts, and all cash and other property from time to time deposited therein, the execution of a Controlled Account Agreement with the depository or other institution with which the applicable Pledged Accounts are maintained, as provided in Section 5(h), (i), (C) with respect to Commodity Contracts, the execution of a control agreement with the commodity intermediary with which such Commodity Contract is carried, as provided in Section 5(h)(i), (D) with respect to the perfection of the security interest created hereby in the United States Intellectual Property and Licenses, the recording of the appropriate Intellectual Property Security Agreement in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, (E) with respect to the perfection of the security interest created hereby in foreign Intellectual Property and Licenses, registrations and filings in jurisdictions located outside of the United States and covering rights in such jurisdictions relating to such foreign Intellectual Property and Licenses, (F) with respect to the perfection of the security interest created hereby in any Letter-of-Credit Rights, the consent of the issuer of the applicable letter of credit to the assignment of proceeds as provided in the Code as in effect in the applicable jurisdiction, (G) with respect to Investment Property constituting uncertificated securities, the applicable Grantor causing the issuer thereof either (i) to register the Secured Party as the registered owner of such securities or (ii) to agree in an authenticated record with such Grantor and the Secured Party that such issuer will comply with instructions with respect to such securities originated by the Secured Party without further consent of such Grantor, such authenticated record to be in form and substance satisfactory to the Secured Party, (H) with respect to Investment Property constituting certificated securities or instruments, such items to be delivered to and held by or on behalf of the Secured Party pursuant hereto in suitable form for transfer by delivery or accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Secured Party, (I) with respect to any action that may be necessary to obtain control of Collateral constituting Commodity Contracts, Electronic Chattel Paper or Letter-of-Credit Rights, the taking of such actions, and (J) the Secured Party having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral (subclauses (A) through (J) each a “**Perfection Requirement**” and collectively, the “**Perfection Requirements**”).

(k) This Agreement creates in favor of the Secured Party a legal, valid and enforceable security interest in the Collateral, as security for the Obligations. The performance of the Perfection Requirements results in the perfection of such security interest in the Collateral. Such security interest is (or in the case of Collateral in which each Grantor obtains rights after the date hereof, will be), subject only to Permitted Liens and the Perfection Requirements, a first priority, valid, enforceable and perfected security interests in all personal property of each Grantor (other than Excluded Collateral). Such recordings and filings and all other action necessary to perfect and protect such security interest have been or will be duly taken by within 5 Business Days of the date hereof (and, in the case of Collateral in which any Grantor obtains rights after the date hereof, will be duly taken), except for the Secured Party’s having possession of all Documents, Chattel Paper, Instruments and cash constituting Collateral after the date hereof and the other actions, filings and recordations described above, including the Perfection Requirements.

(l) As of the date hereof, no Grantor holds any Commercial Tort Claims or has knowledge of any pending Commercial Tort Claims, except for the Commercial Tort Claims described in Schedule VI.

(m) All of the Pledged Equity is presently owned by the applicable Grantor as set forth in Schedule IV, and is presently represented by the certificates listed on Schedule IV hereto (if certificated). As of the date hereof, there are no existing options, warrants, calls or commitments of any character whatsoever relating to the Pledged Equity other than as contemplated and permitted by the Transaction Documents. Each Grantor is the sole holder of record and the sole beneficial owner of the Pledged Equity, as applicable. None of the Pledged Equity has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject. The Pledged Equity constitutes 100% or such other percentage as set forth on Schedule IV of the issued and outstanding shares of Capital Stock of the applicable Pledged Entity.

(n) Such Grantor (i) is a corporation, limited liability company or limited partnership, as applicable, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, (ii) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute and deliver this Agreement and each other Transaction Document to which such Grantor is a party, and to consummate the transactions contemplated hereby and thereby and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified would not result in a Material Adverse Effect.

(o) The execution, delivery and performance by each Grantor of this Agreement and each other Transaction Document to which such Grantor is a party (i) have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (ii) do not and will not contravene its charter or by-laws, limited liability company or operating agreement, certificate of partnership or partnership agreement, as applicable, or any applicable law or any contractual restriction binding on such Grantor or its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Transaction Document) upon or with respect to any of its assets or properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to it or its operations or any of its assets or properties.

(p) This Agreement and each of the other Transaction Documents to which any Grantor is or will be a party, when delivered, will be, a legal, valid and binding obligation of such Grantor, enforceable against such Grantor in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or other similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(q) There are no conditions precedent to the effectiveness of this Agreement that have not been satisfied or waived.

SECTION 5. Covenants as to the Collateral. So long as any of the Obligations shall remain outstanding, unless the Secured Party shall otherwise consent in writing:

(a) Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Secured Party may reasonably request in order to: (i) perfect and protect the security interest of the Secured Party created hereby; (ii) enable the Secured Party to exercise and enforce its rights and remedies hereunder in respect of the Collateral, including, without limitation, the Controlled Accounts; or (iii) otherwise effect the purposes of this Agreement, including, without limitation: (A) marking conspicuously all Chattel Paper and each License and, at the request of the Secured Party, each of its Records pertaining to the Collateral with a legend, in form and substance satisfactory to the Secured Party, indicating that such Chattel Paper, License or Collateral is subject to the security interest created hereby, (B) delivering and pledging to the Secured Party each Promissory Note, Security (subject to the limitations set forth in Section 2), Chattel Paper or other Instrument, now or hereafter owned by any Grantor, duly endorsed and accompanied by executed instruments of transfer or assignment, all in form and substance satisfactory to the Secured Party, (C) executing and filing (to the extent, if any, that any Grantor's signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, as may be necessary or that the Secured Party may reasonably request in order to perfect and preserve the security interest created hereby, (D) furnishing to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral in each case as the Secured Party may reasonably request, all in reasonable detail, (E) if any Collateral shall be in the possession of a third party, notifying such Person of the Secured Party's security interest created hereby and obtaining a written acknowledgment from such Person, in form and substance reasonably satisfactory to the Secured Party, that such Person holds possession of the Collateral for the benefit of the Secured Party, (F) if at any time after the date hereof, any Grantor acquires or holds any Commercial Tort Claim, promptly notifying the Secured Party in a writing signed by such Grantor setting forth a brief description of such Commercial Tort Claim and granting to the Secured Party a security interest therein and in the proceeds thereof, which writing shall incorporate the provisions hereof and shall be in form and substance satisfactory to the Secured Party, (G) upon the acquisition after the date hereof by any Grantor of any motor vehicle or other Equipment subject to a certificate of title or ownership (other than a motor vehicle or Equipment that is subject to a purchase money security interest), causing the Secured Party to be listed as the lienholder on such certificate of title or ownership and delivering evidence of the same to the Secured Party in accordance with Section 5(j) hereof; and (H) taking all actions required by the Code or by other law, as applicable, in any relevant Code jurisdiction, or by other law as applicable in any foreign jurisdiction.

(b) Location of Collateral. Each Grantor will keep the Collateral, other than Collateral that is in transport for sale, delivery, or repair in the ordinary course of business, (i) at the locations specified therefor on Schedule III hereto, or (ii) at such other locations set forth on Schedule III and with respect to which the Secured Party has filed financing statements and otherwise fully perfected its Liens thereon, or (iii) at such other locations in the United States, provided that 30 days prior to any change in the location of any Collateral to such other location, or upon the acquisition of any Collateral to be kept at such other locations, the Grantors shall give the Secured Party written notice thereof and deliver to the Secured Party a new Schedule III indicating such new locations and such other written statements and schedules as the Secured Party may require.

(c) Condition of Equipment. Each Grantor will maintain or cause to be maintained and preserved in good condition, repair and working order, ordinary wear and tear excepted, the Equipment (necessary or useful to its business) and will forthwith, or in the case of any loss or damage to any Equipment of any Grantor within a commercially reasonable time after the occurrence thereof, make or cause to be made all repairs, replacements and other improvements in connection therewith which are necessary or desirable, consistent with past practice in such Grantor's reasonable business judgment, or which the Secured Party may request to such end. Any Grantor will promptly furnish to the Secured Party a statement describing in reasonable detail any such loss or damage in excess of \$25,000 per occurrence to any Equipment.

(d) Taxes, Etc. Each Grantor agrees to pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Equipment and Inventory, except to the extent the validity thereof is being contested in good faith by proper proceedings which stay the imposition of any penalty, fine or Lien resulting from the non-payment thereof and with respect to which adequate reserves in accordance with GAAP have been set aside for the payment thereof.

(e) Insurance.

(i) Each Grantor will, at its own expense, maintain insurance (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks, in such form and with responsible and reputable insurance companies or associations as is required by any Governmental Authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and in any event, in amount, adequacy and scope reasonably satisfactory to the Secured Party.

(ii) To the extent requested by the Secured Party at any time and from time to time, each such policy for liability insurance shall provide for all losses to be paid on behalf of the Secured Party and any Grantor as their respective interests may appear, and each policy for property damage insurance shall provide for all losses to be adjusted with, and paid directly to, the Secured Party. In addition to and without limiting the foregoing, to the extent requested by the Secured Party at any time and from time to time, each such policy shall in addition (A) name the Secured Party as an additional insured party and/or loss payee, as applicable, thereunder (without any representation or warranty by or obligation upon the Secured Party) as its interests may appear, (B) contain an agreement by the insurer that any loss thereunder shall be payable to the Secured Party on its own account notwithstanding any action, inaction or breach of representation or warranty by any Grantor, (C) provide that there shall be no recourse against the Secured Party for payment of premiums or other amounts with respect thereto, and (D) provide that at least 30 days' prior written notice of cancellation, lapse, expiration or other adverse change shall be given to the Secured Party by the insurer. Any Grantor will, if so requested by the Secured Party, deliver to the Secured Party original or duplicate policies of such insurance (including certificates demonstrating compliance with this Section 5(e)) and, as often as the Secured Party may reasonably request, a report of a reputable insurance broker with respect to such insurance. Any Grantor will also, at the request of the Secured Party, execute and deliver instruments of assignment of such insurance policies and cause the respective insurers to acknowledge notice of such assignment.

(iii) Reimbursement under any liability insurance maintained by any Grantor pursuant to this Section 5(e) may be paid directly to the Person who shall have incurred liability covered by such insurance. In the case of any loss involving damage to Equipment or Inventory, to the extent paragraph (iv) of this Section 5(e) is not applicable, any proceeds of insurance involving such damage shall be paid to the Secured Party, and any Grantor will make or cause to be made the necessary repairs to or replacements of such Equipment or Inventory, and any proceeds of insurance maintained by any Grantor pursuant to this Section 5(e) (except as otherwise provided in paragraph (iv) in this Section 5(e)) shall be paid by the Secured Party to any Grantor as reimbursement for the reasonable costs of such repairs or replacements.

(iv) Notwithstanding anything to the contrary in subsection 5(e)(iii) above, following and during the continuance of an Event of Default, all insurance payments in respect of each Grantor's properties and business shall be paid to the Secured Party and applied as specified in Section 7(b) hereof.

(f) Provisions Concerning the Accounts and the Licenses.

(i) Each Grantor will (A) give the Secured Party at least 30 days' prior written notice of any change in such Grantor's name, identity or organizational structure, (B) maintain its jurisdiction of incorporation, organization or formation as set forth in Schedule I hereto, (C) promptly notify the Secured Party upon obtaining an organizational identification number, if on the date hereof such Grantor did not have such identification number, and (D) keep adequate records concerning the Collateral and permit representatives of the Secured Party during normal business hours on reasonable notice to such Grantor, to inspect and make abstracts from such records.

(ii) Each Grantor will (except as otherwise provided in this subsection (f)), continue to collect, at its own expense, all amounts due or to become due under the Accounts. In connection with such collections, any Grantor may (and, at the Secured Party's direction, will) take such action as any Grantor or the Secured Party may deem necessary or advisable to enforce collection or performance of the Accounts; provided, however, that the Secured Party shall have the right at any time following the occurrence and during the continuance of an Event of Default to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Secured Party and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to any Grantor thereunder directly to the Secured Party or its designated agent and, upon such notification and at the expense of any Grantor and to the extent permitted by applicable law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as any Grantor might have done. After receipt by any Grantor of a notice from the Secured Party that the Secured Party has notified, intends to notify, or has enforced or intends to enforce any Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the proviso to the immediately preceding sentence, (A) all amounts and proceeds (including Instruments) received by any Grantor in respect of the Accounts shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of any Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be applied as specified in Section 7(b) hereof, and (B) no Grantor will adjust, settle or compromise the amount or payment of any Account or release wholly or partly any Account Debtor or obligor thereof or allow any credit or discount thereon. In addition, upon the occurrence and during the continuance of an Event of Default, the Secured Party may (in its sole and absolute discretion) direct any or all of the banks and financial institutions with which any Grantor either maintains a Deposit Account or a lockbox (including, without limitation, any Controlled Account) or deposits the proceeds of any Accounts to send immediately to the Secured Party by wire transfer (to such deposit account as the Secured Party shall specify, or in such other manner as the Secured Party shall direct) all or a portion of such securities, cash, investments and other items held by such institution. Any such securities, cash, investments and other items so received by the Secured Party shall be applied as specified in accordance with Section 7(b) hereof.

(iii) Upon the occurrence and during the continuance of any breach or default under any material License referred to in Schedule II hereto by any party thereto other than any Grantor, each Grantor party thereto will, promptly after obtaining knowledge thereof, give the Secured Party written notice of the nature and duration thereof, specifying what action, if any, it has taken and proposes to take with respect thereto and thereafter will take reasonable steps to protect and preserve its rights and remedies in respect of such breach or default, or will obtain or acquire an appropriate substitute License.

(iv) Each Grantor will, at its expense, promptly deliver to the Secured Party a copy of each notice or other communication received by it by which any other party to any material License referred to in Schedule II hereto purports to exercise any of its rights or affect any of its obligations thereunder, together with a copy of any reply by such Grantor thereto.

(v) Each Grantor will exercise promptly and diligently each and every right which it may have under each material License (other than any right of termination) and will duly perform and observe in all respects all of its obligations under each material License and will take all action reasonably necessary to maintain such Licenses in full force and effect. No Grantor will, without the prior written consent of the Secured Party, cancel, terminate, amend or otherwise modify in any respect, or waive any provision of, any material License referred to in Schedule II hereto.

(g) Transfers and Other Liens.

(i) Except as otherwise expressly permitted in the other Transaction Documents, no Grantor shall, directly or indirectly, sell, lease, license, assign, transfer, spin-off, split-off, close, convey or otherwise dispose of any Collateral whether in a single transaction or a series of related transactions, other than (A) sales, leases, licenses, assignments, transfers, conveyances and other dispositions of such assets or rights by such Grantor for value in the ordinary course of business consistent with past practices and (B) sales of Inventory and product in the ordinary course of business.

(ii) No Grantor shall, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its Capital Stock.

(iii) Reserved.

(iv) No Grantor shall enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof.

(v) No Grantor will create, suffer to exist or grant any Lien upon or with respect to any Collateral other than a Permitted Lien.

(h) Intellectual Property.

(i) If applicable, each Grantor shall duly execute and deliver the applicable Intellectual Property Security Agreement. Each Grantor (either itself or through licensees) will, and will cause each licensee thereof to, take all action necessary to maintain all of the Intellectual Property in full force and effect, including, without limitation, using the proper statutory notices, numbers and markings (relating to patent, trademark and copyright rights) and using the Trademarks on each applicable trademark class of goods in order to so maintain the Trademarks in full force and free from any claim of abandonment for non-use, and each Grantor will not (nor permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Intellectual Property may become abandoned, cancelled or invalidated; provided, however, that so long as no Event of Default has occurred and is continuing, no Grantor shall have an obligation to use or to maintain any Intellectual Property (A) that relates solely to any product or work, that is no longer necessary or material and has been, or is in the process of being, discontinued, abandoned or terminated in the ordinary course of business and consistent with the exercise of reasonable business judgment, (B) that is being replaced with Intellectual Property substantially similar to the Intellectual Property that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such replacement Intellectual Property is subject to the Lien created by this Agreement and does not have a material adverse effect on the business of any Grantor or (C) that is substantially the same as another Intellectual Property that is in full force, so long as the failure to use or maintain such Intellectual Property does not materially adversely affect the validity of such replacement Intellectual Property and so long as such other Intellectual Property is subject to the Lien and security interest created by this Agreement and does not have a material adverse effect on the business of any Grantor. Each Grantor will cause to be taken all reasonably necessary steps in any proceeding before the United States Patent and Trademark Office and the United States Copyright Office or any similar office or agency in any other country or political subdivision thereof to maintain each registration of the Intellectual Property and application for registration of Intellectual Property (other than the Intellectual Property described in the proviso to the immediately preceding sentence), including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings and payment of maintenance fees, filing fees, taxes or other governmental fees. If any Intellectual Property (other than Intellectual Property described in the proviso to the second sentence of subsection (i) of this clause (h)) is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, each Grantor shall (x) upon learning of such infringement, misappropriation, dilution or other violation, promptly notify the Secured Party and (y) promptly sue for infringement, misappropriation, dilution or other violation, seek injunctive relief where appropriate and recover any and all damages for such infringement, misappropriation, dilution or other violation, or take such other actions as such Grantor shall deem appropriate under the circumstances to protect such Intellectual Property. Each Grantor shall furnish to the Secured Party from time to time upon its request statements and schedules further identifying and describing the Intellectual Property and Licenses and such other reports in connection with the Intellectual Property and Licenses as the Secured Party may reasonably request, all in reasonable detail and promptly upon request of the Secured Party, following receipt by the Secured Party of any such statements, schedules or reports, each Grantor shall modify this Agreement by amending Schedule II hereto, as the case may be, to include any Intellectual Property and License, as the case may be, which is or hereafter becomes part of the Collateral under this Agreement and shall execute and authenticate such documents and do such acts as shall be necessary or, in the reasonable judgment of the Secured Party, desirable to subject such Intellectual Property and Licenses to the Lien and security interest created by this Agreement. Notwithstanding anything herein to the contrary, upon the occurrence and during the continuance of an Event of Default, no Grantor may abandon, surrender or otherwise permit any Intellectual Property to become abandoned, cancelled or invalid without the prior written consent of the Secured Party, and if any Intellectual Property is infringed, misappropriated, diluted or otherwise violated in any material respect by a third party, each Grantor will take such reasonable action as the Secured Party shall deem appropriate under the circumstances to protect such Intellectual Property.

(ii) In no event shall any Grantor, either itself or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright or the United States Copyright Office or the United States Patent and Trademark Office, as applicable, or in any similar office or agency of the United States or any country or any political subdivision thereof unless it gives the Secured Party prior written notice thereof. Upon request of the Secured Party, any Grantor shall execute, authenticate and deliver any and all assignments, agreements, instruments, documents and papers as the Secured Party may reasonably request to evidence the Secured Party's security interest hereunder in such Intellectual Property and the General Intangibles of any Grantor relating thereto or represented thereby, and each Grantor hereby appoints the Secured Party its attorney-in-fact to execute and/or authenticate and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, and such power (being coupled with an interest) shall be irrevocable until all Obligations are Paid in Full.

(i) Pledged Accounts.

(A) Each Grantor shall cause each bank and other financial institution which maintains a Controlled Account (each a "**Controlled Account Bank**") to execute and deliver to the Secured Party, in form and substance satisfactory to the Secured Party, a Controlled Account Agreement with respect to such Controlled Account, duly executed by each Grantor and such Controlled Account Bank, pursuant to which such Controlled Account Bank among other things shall irrevocably agree, with respect to such Controlled Account, that (i) at any time after any Grantor or the Secured Party shall have notified such Controlled Account Bank that an Event of Default has occurred or is continuing, such Controlled Account Bank will comply with any and all instructions originated by the Secured Party directing the disposition of the funds in such Controlled Account without further consent by such Grantor, (ii) such Controlled Account Bank shall waive, subordinate or agree not to exercise any rights of setoff or recoupment or any other claim against the applicable Controlled Account other than for payment of its service fees and other charges directly related to the administration of such Controlled Account and for returned checks or other items of payment, (iii) at any time after any Grantor or the Secured Party shall have notified such Controlled Account Bank that an Event of Default has occurred or is continuing, with respect to each such Controlled Account, such Controlled Account Bank shall not comply with any instructions, directions or orders of any form with respect to such Controlled Accounts other than instructions, directions or orders originated by the Secured Party, (iv) all funds deposited by any Grantor with such Controlled Account Bank shall be subject to a perfected, first priority security interest in favor of the Secured Party, and (v) upon receipt of written notice from the Secured Party during the continuance of an Event of Default, such Controlled Account Bank shall immediately send to the Secured Party by wire transfer (to such account as the Secured Party shall specify, or in such other manner as the Secured Party shall direct) all such funds and other items held by it. No Grantor shall create or maintain any Pledged Account without the prior written consent of the Secured Party and complying with the terms of this Agreement.

(B) If at any time after the Closing Date, the average daily balance of any Account that is not subject to a Controlled Account Agreement exceeds \$50,000 during any calendar month (including the calendar month in which the Closing Date occurs), the Company shall, either (x) within two (2) Business Days following such date, transfer to a Controlled Account an amount sufficient to reduce the total aggregate amount of the cash in such Account to an amount not in excess of \$50,000 or (y) within twenty-one (21) calendar days following the last day of such calendar month, deliver to the Secured Party a Controlled Account Agreement with respect to such Account, duly executed by such Grantor and the depository bank in which such Account is maintained.

(C) Notwithstanding anything to the contrary contained in Section 5(i)(B) above, and without limiting any of the foregoing, if at any time after the Closing Date, the total aggregate amount of the cash of the Company and any of its Subsidiaries, in the aggregate, that is not held in a Controlled Account, with respect to any Accounts worldwide exceeds \$100,000 (the "**Maximum Free Cash Amount**"), the Company shall within two (2) Business Days following such date, either (x) transfer to a Controlled Account an amount sufficient to reduce the total aggregate amount of the cash that is not held in a Controlled Account to an amount not in excess of the Maximum Free Cash Amount or (y) deliver to the Secured Party a Controlled Account Agreement with respect to such Account (or Accounts), duly executed by such Grantor and the depository bank in which such Account (or Accounts) is maintained, as necessary to reduce the total aggregate amount of the cash that is not held in a Controlled Account to an amount not in excess of the Maximum Free Cash Amount.

(j) Motor Vehicles.

(i) Upon the Secured Party's written request, each Grantor, for motor vehicles with a value in excess of \$25,000 shall deliver to the Secured Party originals of the certificates of title or ownership, if physical and not electronic, owned by it, with the Secured Party listed as lienholder.

(ii) Each Grantor hereby appoints the Secured Party as its attorney-in- fact, effective the date hereof and terminating upon the termination of this Agreement, for the purpose of (A) executing on behalf of such Grantor title or ownership applications for filing with appropriate Governmental Authorities to enable motor vehicles now owned or hereafter acquired with a value in excess of \$25,000 by such Grantor to be retitled and the Secured Party listed as lienholder thereof, (B) filing such applications with such Governmental Authorities, and (C) executing such other agreements, documents and instruments on behalf of, and taking such other action in the name of, such Grantor as the Secured Party may deem necessary or advisable to accomplish the purposes hereof (including, without limitation, for the purpose of creating in favor of the Secured Party a perfected Lien on the motor vehicles and exercising the rights and remedies of the Secured Party hereunder). This appointment as attorney-in-fact is coupled with an interest and is irrevocable until all of the Obligations are Paid in Full.

(iii) Any certificates of title or ownership delivered pursuant to the terms hereof shall be accompanied by odometer statements for each motor vehicle covered thereby.

(iv) So long as no Event of Default shall have occurred and be continuing, upon the request of any Grantor, the Secured Party shall execute and deliver to any Grantor such instruments as such Grantor shall reasonably request to remove the notation of the Secured Party as lienholder on any certificate of title for any motor vehicle; provided, however, that any such instruments shall be delivered, and the release effective, only upon receipt by the Secured Party of a certificate from any Grantor stating that such motor vehicle is to be sold or has suffered a casualty loss (with title thereto in such case passing to the casualty insurance company therefor in settlement of the claim for such loss) and the amount that any Grantor will receive as sale proceeds or insurance proceeds. Any net proceeds of such sale or casualty loss shall be paid to the Secured Party hereunder immediately upon receipt, to be applied to the Obligations then outstanding.

(k) Control. Each Grantor hereby agrees to take any or all action that may be necessary or that the Secured Party may reasonably request in order for the Secured Party to obtain "control" in accordance with Sections 9-105 through 9-107 of the Code with respect to the following Collateral: (i) Electronic Chattel Paper, (ii) Investment Property, and (iii) Letter-of- Credit Rights.

(l) Inspection and Reporting. Each Grantor shall permit the Secured Party, or any agent or representatives thereof or such professionals or other Persons as the Secured Party may designate (at Grantors' sole cost and expense), during business hours and upon reasonable, prior written notice, (i) to examine and make copies of and abstracts from any Grantor's records and books of account, (ii) to visit and inspect its properties, (iii) to verify materials, leases, Instruments, Accounts, Inventory and other assets of any Grantor from time to time, and (iv) to conduct audits, physical counts, appraisals and/or valuations, examinations at the locations of any Grantor; provided that, unless a Default or an Event of Default has occurred and is continuing, such examinations and inspections shall be limited to four visits per calendar year. Each Grantor shall also permit the Secured Party, or any agent or representatives thereof or such attorneys, accountants or other professionals or other Persons as the Secured Party may designate to discuss such Grantor's affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives. Without limiting the foregoing, the Secured Party may, upon no less than two (2) days' written notice to the Company, in the Secured Party's own name, in the name of a nominee of the Secured Party, or in the name of any Grantor direct such Grantor to communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of such Grantor, parties to contracts with such Grantor and/or obligors in respect of Instruments of such Grantor to verify with such Persons, to the Secured Party's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper, payment intangibles and/or other receivables.

(m) Future Subsidiaries. If any Grantor hereafter creates or acquires any Subsidiary, simultaneously with the creation of such Subsidiary or within 3 Business Days of the acquisition of such Subsidiary, such Grantor shall (i) if such Subsidiary is a Domestic Subsidiary, cause such Subsidiary to become a party to this Agreement as an additional "Grantor" hereunder, (ii) deliver to the Secured Party updated Schedules to this Agreement, as appropriate (including, without limitation, an updated Schedule IV to reflect the grant by such Grantor of a Lien on all Pledged Equity now or hereafter owned by such Grantor), (iii) if such Subsidiary is a Domestic Subsidiary, cause such Subsidiary to duly execute and deliver a guaranty of the Obligations in favor of the Secured Party in form and substance acceptable to the Secured Party, (iv) deliver to the Secured Party the stock certificates representing all or 65%, as applicable, of the Capital Stock of such Subsidiary, along with undated stock powers for each such certificate, executed in blank (or, if any such shares of Capital Stock are uncertificated, confirmation and evidence reasonably satisfactory to the Secured Party that the security interest in such uncertificated securities has been transferred to and perfected by the Secured Party, in accordance with Sections 8-313, 8-321 and 9-115 of the Code or any other similar or local or foreign law that may be applicable), and (v) duly execute and/or cause to be delivered to the Secured Party, in form and substance acceptable to the Secured Party, such opinions of counsel and other documents as the Secured Party shall request with respect thereto; provided, however, that no Grantor shall be required to pledge any Excluded Collateral. Each Grantor hereby authorizes the Secured Party to attach such updated Schedules to this Agreement and agrees that all Pledged Equity listed on any updated Schedule delivered to the Secured Party shall for all purposes hereunder be considered Collateral. The Grantors agree that the pledge of the shares of Capital Stock acquired by a Grantor of a Foreign Subsidiary may be supplemented by one or more separate pledge agreements, deeds of pledge, share charges, or other similar agreements or instruments, executed and delivered by the relevant Grantor in favor of the Secured Party, which pledge agreements will provide for the pledge of such shares of Capital Stock in accordance with the laws of the applicable foreign jurisdiction. With respect to such shares of Capital Stock, the Secured Party may, at any time and from time to time, in its sole discretion, take actions in such foreign jurisdictions that will result in the perfection of the Lien created in such shares of Capital Stock.

SECTION 6. Additional Provisions Concerning the Collateral.

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, each Grantor hereby (i) authorizes the Secured Party to execute any such agreements, instruments or other documents in such Grantor's name and to file such agreements, instruments or other documents in such Grantor's name and in any appropriate filing office, (ii) authorizes the Secured Party at any time and from time to time to file, one or more financing or continuation statements, and amendments thereto, relating to the Collateral (including, without limitation, any such financing statements that (A) describe the Collateral as "all assets" or "all personal property" (or words of similar effect) or that describe or identify the Collateral by type or in any other manner as the Secured Party may determine regardless of whether any particular asset of such Grantor falls within the scope of Article 9 of the Code or whether any particular asset of such Grantor constitutes part of the Collateral, and (B) contain any other information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether such Grantor is an organization, the type of organization and any organizational identification number issued to such Grantor) and (iii) ratifies such authorization to the extent that the Secured Party has filed any such financing or continuation statements, or amendments thereto, prior to the date hereof. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(b) Each Grantor hereby irrevocably appoints the Secured Party as its attorney-in-fact and proxy, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Secured Party's discretion, to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, (i) to obtain and adjust insurance required to be paid to the Secured Party pursuant to Section 5(e) hereof, (ii) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (iii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper in connection with clause (i) or (ii) above, (iv) to file any claims or take any action or institute any proceedings which the Secured Party may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of the Secured Party with respect to any Collateral, (v) to execute assignments, licenses and other documents to enforce the rights of the Secured Party with respect to any Collateral, and (vi) during the continuation of an Event of Default, to verify any and all information with respect to any and all Accounts. This power is coupled with an interest and is irrevocable until all of the Obligations are Paid in Full.

(c) For the purpose of enabling the Secured Party to exercise rights and remedies hereunder, at such time as the Secured Party shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to the Secured Party, to the extent assignable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, assign, license or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. Notwithstanding anything contained herein to the contrary, but subject to Section 5(g) and Section 5(h) hereof, so long as no Event of Default shall have occurred and be continuing, any Grantor may exploit, use, enjoy, protect, license, sublicense, assign, sell, dispose of or take other actions with respect to the Intellectual Property in the ordinary course of its business and as otherwise expressly permitted by any of the other Transaction Documents. In furtherance of the foregoing, unless an Event of Default shall have occurred and be continuing, the Secured Party shall from time to time, upon the request of any Grantor, execute and deliver any instruments, certificates or other documents, in the form so requested, which such Grantor shall have certified are appropriate (in such Grantor's judgment) to allow it to take any action permitted above (including relinquishment of the license provided pursuant to this clause (c) as to any Intellectual Property). Further, upon the Payment in Full of all of the Obligations, the Secured Party (subject to Section 10(e) hereof) shall release and reassign to any Grantor all of the Secured Party's right, title and interest in and to the Intellectual Property, and the Licenses, all without recourse, representation or warranty whatsoever. The exercise of rights and remedies hereunder by the Secured Party shall not terminate the rights of the holders of any licenses or sublicenses theretofore granted by each Grantor in accordance with the second sentence of this clause (c). Each Grantor hereby releases the Secured Party from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Secured Party under the powers of attorney granted herein other than actions taken or omitted to be taken through the Secured Party's gross negligence or willful misconduct, as determined by a final determination of a court of competent jurisdiction.

(d) If any Grantor fails to perform any agreement or obligation contained herein, the Secured Party may itself perform, or cause performance of, such agreement or obligation, in the name of such Grantor or the Secured Party, and the expenses of the Secured Party incurred in connection therewith shall be payable by such Grantor pursuant to Section 8 hereof and shall be secured by the Collateral.

(e) The powers conferred on the Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Secured Party shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

(f) Anything herein to the contrary notwithstanding (i) each Grantor shall remain liable under the Licenses and otherwise with respect to any of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by the Secured Party of any of its rights hereunder shall not release any Grantor from any of its obligations under the Licenses or otherwise in respect of the Collateral, and (iii) the Secured Party shall not have any obligation or liability by reason of this Agreement under the Licenses or with respect to any of the other Collateral, nor shall the Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

(g) As long as no Event of Default shall have occurred and be continuing and until written notice shall be given to the applicable Grantor:

(i) Each Grantor shall have the right, from time to time, to vote and give consents with respect to the Pledged Equity, or any part thereof for all purposes not inconsistent with the provisions of any Transaction Document; provided, however, that no vote shall be cast, and no consent shall be given or action taken, which would have the effect of impairing the position or interest of the Secured Party in respect of the Pledged Equity or which would authorize, effect or consent to (unless and to the extent expressly permitted by the Note):

(A) the dissolution or liquidation, in whole or in part, of a Pledged Entity;

(B) the consolidation or merger of a Pledged Entity with any other Person;

(C) the sale, disposition or encumbrance of all or substantially all of the assets of a Pledged Entity, except for Liens in favor of the Secured Party;

(D) any change in the authorized number of shares, the stated capital or the authorized share capital of a Pledged Entity or the issuance of any additional shares of its Capital Stock; or

(E) the alteration of the voting rights with respect to the Capital Stock of a Pledged Entity.

(h) (i) Each Grantor shall be entitled, from time to time, to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Equity to the extent not in violation of the Note other than any and all: (A) dividends and interest paid or payable other than in cash in respect of any Pledged Equity, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Pledged Equity; (B) dividends and other distributions paid or payable in cash in respect of any Pledged Equity in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of a Pledged Entity; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, any Pledged Equity; provided, however, that until actually paid all rights to such distributions shall remain subject to the Lien created by this Agreement; and

(ii) all dividends and interest (other than such cash dividends and interest as are permitted to be paid to any Grantor in accordance with clause (i) above) and all other distributions in respect of any of the Pledged Equity, whenever paid or made, shall be delivered to the Secured Party to hold as Pledged Equity and shall, if received by any Grantor, be received in trust for the benefit of the Secured Party, be segregated from the other property or funds of such Grantor, and be forthwith delivered to the Secured Party as Pledged Equity in the same form as so received (with any necessary endorsement).

SECTION 7. Remedies Upon Event of Default: Application of Proceeds. If any Event of Default shall have occurred and be continuing:

(a) Secured Party may exercise in respect of the Collateral, in addition to any other rights and remedies provided for herein, in any other Transaction Document or otherwise available to it, all of the rights and remedies of a secured party upon default under the Code (whether or not the Code applies to the affected Collateral), and also may (i) take absolute control of the Collateral, including, without limitation, transfer into the Secured Party's name or into the name of its nominee or nominees (to the extent the Secured Party has not theretofore done so) and thereafter receive, all payments made thereon, give all consents, waivers and ratifications in respect thereof and otherwise act with respect thereto as though it were the outright owner thereof, (ii) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Secured Party forthwith, assemble all or part of its respective Collateral as directed by the Secured Party and make it available to the Secured Party at a place or places to be designated by the Secured Party that is reasonably convenient to both parties, and the Secured Party may enter into and occupy any premises owned or leased by any Grantor where the Collateral or any part thereof is located or assembled for a reasonable period in order to effectuate the Secured Party's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below and without any obligation to prepare or process the Collateral for sale, (A) sell the Collateral or any part thereof in one or more parcels at public or private sale (including, without limitation, by credit bid), at any of the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Secured Party may deem commercially reasonable and/or (B) lease, license or dispose of the Collateral or any part thereof upon such terms as the Secured Party may deem commercially reasonable. Each Grantor agrees that, to the extent notice of sale or any other disposition of its respective Collateral shall be required by law, at least ten (10) days' notice to any Grantor of the time and place of any public sale or the time after which any private sale or other disposition of its respective Collateral is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale or other disposition of any Collateral regardless of notice of sale having been given. The Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against the Secured Party arising by reason of the fact that the price at which its respective Collateral may have been sold at a private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount of the Obligations, and waives all rights that any Grantor may have to require that all or any part of such Collateral be marshaled upon any sale (public or private) thereof. Each Grantor hereby acknowledges that (i) any such sale of its respective Collateral by the Secured Party shall be made without warranty, (ii) the Secured Party may specifically disclaim any warranties of title, possession, quiet enjoyment or the like, and (iii) such actions set forth in clauses (i) and (ii) above shall not adversely affect the commercial reasonableness of any such sale of Collateral. In addition to the foregoing, (1) upon written notice to any Grantor from the Secured Party after and during the continuance of an Event of Default, such Grantor shall cease any use of the Intellectual Property or any trademark, patent or copyright similar thereto for any purpose described in such notice; (2) the Secured Party may, at any time and from time to time after and during the continuance of an Event of Default, upon 10 days' prior notice to such Grantor, license, whether general, special or otherwise, and whether on an exclusive or non-exclusive basis, any of the Intellectual Property, throughout the universe for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine; and (3) the Secured Party may, at any time, pursuant to the authority granted in Section 6 hereof or otherwise (such authority being effective upon the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of such Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

(b) Any cash held by the Secured Party as Collateral and all Cash Proceeds received by the Secured Party in respect of any sale or disposition of or collection from, or other realization upon, all or any part of the Collateral shall be applied as follows: first, to pay any fees, indemnities or expense reimbursements then due to the Secured Party (including those described in Section 8 hereof); second, to pay interest due under the Note owing; third, to pay or prepay principal in respect of the Note, whether or not then due; fourth, to pay or prepay any other Obligations, whether or not then due, in such order and manner as the Secured Party shall elect. Any surplus of such cash or Cash Proceeds held by the Secured Party and remaining after the Payment in Full of all of the Obligations shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) In the event that the proceeds of any such sale, disposition, collection or realization are insufficient to pay all amounts to which the Secured Party is legally entitled, each Grantor shall be, jointly and severally, liable for the deficiency, together with interest thereon at the highest rate specified in the Note for interest on overdue principal thereof or such other rate as shall be fixed by applicable law, together with the costs of collection and the reasonable fees, costs, expenses and other charges of any attorneys employed by the Secured Party to collect such deficiency.

(d) To the extent that applicable law imposes duties on the Secured Party to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Secured Party (i) to fail to incur expenses deemed significant by the Secured Party to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as any Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Secured Party against risks of loss, collection or disposition of Collateral or to provide to the Secured Party a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Secured Party, to obtain the services of brokers, investment bankers, consultants, attorneys and other professionals to assist the Secured Party in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this section is to provide non-exhaustive indications of what actions or omissions by the Secured Party would be commercially reasonable in the Secured Party's exercise of remedies against the Collateral and that other actions or omissions by the Secured Party shall not be deemed commercially unreasonable solely on account of not being indicated in this section. Without limitation upon the foregoing, nothing contained in this section shall be construed to grant any rights to any Grantor or to impose any duties on the Secured Party that would not have been granted or imposed by this Agreement or by applicable law in the absence of this section.

(e) The Secured Party shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of the Secured Party's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that any Grantor lawfully may, each Grantor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Secured Party's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the extent that it lawfully may, each Grantor hereby irrevocably waives the benefits of all such laws.

SECTION 8. Indemnity and Expenses.

(a) Each Grantor agrees, jointly and severally, to defend, protect, indemnify and hold the Secured Party harmless from and against any and all claims, damages, losses, liabilities, obligations, penalties, fees, costs and expenses (including, without limitation, reasonable legal fees, costs, expenses, and disbursements of such Person's counsel) to the extent that they arise out of or otherwise result from this Agreement (including, without limitation, enforcement of this Agreement), except to the extent resulting from such Person's gross negligence or willful misconduct, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal.

(b) Each Grantor agrees, jointly and severally, to pay to the Secured Party upon demand the amount of any and all costs and expenses, including the reasonable fees, costs, expenses and disbursements of counsel for the Secured Party and of any experts and agents (including, without limitation, any collateral trustee which may act as agent of the Secured Party), which the Secured Party may incur in connection with (i) the preparation, negotiation, execution, delivery, recordation, administration, amendment, waiver or other modification or termination of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any Collateral, (iii) the exercise or enforcement of any of the rights of the Secured Party hereunder, or (iv) the failure by any Grantor to perform or observe any of the provisions hereof.

SECTION 9. Notices, Etc. All notices and other communications provided for hereunder shall be in writing and shall be mailed (by certified mail, first-class postage prepaid and return receipt requested), e-mailed or delivered, if to any Grantor, to the Company's address, or if to the Secured Party, to it at its respective address, each as set forth in Section 6.6 of the Note; or as to any such Person, at such other address as shall be designated by such Person in a written notice to all other parties hereto complying as to delivery with the terms of this Section 9. All such notices and other communications shall be effective (a) if sent by certified mail, return receipt requested, when received or three (3) Business Days after deposited in the mails, whichever occurs first, (b) if e-mailed, when transmitted (during normal business hours) and confirmation is received, and otherwise, the day after the notice or communication was transmitted and confirmation is received, or (c) if delivered in person, upon delivery. For the avoidance of doubt, all Foreign Subsidiaries, as Grantors, hereby appoint the Company as its agent for receipt of service of process and all notices and other communications in the United States at the address specified below.

SECTION 10. Miscellaneous.

(a) No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by each Grantor and the Secured Party, and no waiver of any provision of this Agreement, and no consent to any departure by each Grantor therefrom, shall be effective unless it is in writing and signed by each Grantor and the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of the Secured Party to exercise, and no delay in exercising, any right reasonably hereunder or under any of the other Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right reasonably preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Secured Party provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Secured Party under any of the other Transaction Documents against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any of the other Transaction Documents against such party or against any other Person, including but not limited to, any Grantor.

(c) Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(d) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect until Payment in Full of the Obligations, and (ii) be binding on each Grantor and all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the Code and shall inure, together with all rights and remedies of the Secured Party, to the benefit of the Secured Party and its respective permitted successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, without notice to any Grantor, the Secured Party may assign or otherwise transfer its rights and obligations under this Agreement and any of the other Transaction Documents, to any other Person and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to the Secured Party herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to the Secured Party shall mean the assignee of the Secured Party. None of the rights or obligations of any Grantor hereunder may be assigned or otherwise transferred without the prior written consent of the Secured Party, and any such assignment or transfer without such consent of the Secured Party shall be null and void.

(e) Upon the Payment in Full of the Obligations, (i) this Agreement and the security interests created hereby shall terminate and all rights to the Collateral shall revert to the respective Grantor that granted such security interests hereunder, and (ii) the Secured Party will, upon any Grantor's request and at such Grantor's expense, (A) return to such Grantor such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof and (B) execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination, all without any representation, warranty or recourse whatsoever.

(f) Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the 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 under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim, defense or objection 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 at the address for such notices to it under Section 6.6 of the Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Secured Party from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Secured Party.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(h) This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together constitute one and the same Agreement. Delivery of any executed counterpart of a signature page of this Agreement by pdf, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(i) This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Secured Party or any other Person (upon (i) the occurrence of any Insolvency Proceeding of any of the Company or any Grantor or (ii) otherwise, in all cases as though such payment had not been made).

SECTION 11. Material Non-Public Information. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Agreement, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non- public information relating to the Company or any of its Subsidiaries, the Company shall within one (1) Business Day after any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Secured Party contemporaneously with delivery of such notice, and in the absence of any such indication, the Secured Party shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or its Subsidiaries.

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IN WITNESS WHEREOF, each Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTORS:

AKERNA CORP.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

AKERNA SERVICES, LLC

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

MJ FREEWAY, LLC

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

ACCEPTED BY:

MJ Acquisition Corp.,
as Secured Party

By: /s/ Scott Ogur

Name: Scott Ogur

Title: Authorized Representative

EXHIBIT A

FORM OF AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT

AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT

This AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this “**IP Security Agreement**”), dated October 11, 2023, is made by the Persons listed on the signature pages hereof (collectively, the “**Grantors**”) in favor of MJ Acquisition Corp. (the “**Secured Party**”). All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Note (as defined below).

WHEREAS, Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Floor, Denver, CO 80202 (the “**Company**”), is party to (i) the Secured Promissory Note, dated as of even date herewith (as amended, restated, extended, replaced or otherwise modified from time to time, the “**Note**”);

WHEREAS, it is a condition precedent to the issuance of the Note that each Grantor has executed and delivered an Amended and Restated Security and Pledge Agreement made by the Grantors to the Secured Party (as amended, modified, supplemented, renewed, restated or replaced from time to time, the “**Security Agreement**”);

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Secured Party a security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the U.S. Patent and Trademark Office, the United States Copyright Office and other governmental authorities;

WHEREAS, the Grantors have determined that the execution, delivery and performance of this IP Security Agreement directly benefits, and is in the best interest of, the Grantors;

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Secured Party to perform under the Note and the Security Agreement, each Grantor agrees with the Secured Party as follows:

SECTION 1. Grant of Security. Each Grantor hereby grants to the Secured Party a security interest in all of such Grantor’s right, title and interest in and to the following (the “**Collateral**”):

(i) the Patents and Patent applications set forth in Schedule A hereto;

(ii) the Trademark and service mark registrations and applications set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby;

(iii) all Copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including, without limitation, the copyright registrations and applications and exclusive copyright licenses set forth in Schedule C hereto;

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral of or arising from any of the foregoing.

SECTION 2. Security Obligations. The grant of a security interest in, the Collateral by each Grantor under this IP Security Agreement secures the payment of all Obligations of such Grantor now or hereafter existing under or in respect of the Note and the other Transaction Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights, the Commissioner for Patents and the Commissioner for Trademarks and any other applicable government officer record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Secured Party with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

(i) All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York.

(ii) Each Grantor hereby irrevocably submits to the 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 under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim, defense or objection 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 at the address for such notices to it under Section 6.6 of the Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Secured Party from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Secured Party.

(iii) WAIVER OF JURY TRIAL, ETC. EACH GRANTOR IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

(iv) Each Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding referred to in this Section any special, exemplary, indirect, incidental, punitive or consequential damages.

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IN WITNESS WHEREOF, each Grantor has caused this IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

GRANTORS:

AKERNA CORP.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

AKERNA SERVICES, LLC

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

MJ FREEWAY, LLC

By: /s/ Jessica Billingsley
Title: Chief Executive Officer
Name: Jessica Billingsley

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

AMENDED AND RESTATED GUARANTY

This AMENDED AND RESTATED GUARANTY, dated as of October 11, 2023 (this “**Guaranty**”), is made by each of the undersigned (each a “**Guarantor**”, and collectively, the “**Guarantors**”), in favor of MJ Acquisition Corp. (the “**Secured Party**”).

WITNESSETH :

WHEREAS, Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Denver, CO 80202 (the “**Company**”), is party to that certain Amended and Restated Secured Promissory Note, dated as of October 11, 2023 (as amended, restated, extended, replaced or otherwise modified from time to time, the “**Note**”) pursuant to which the Company received a loan from the Secured Party in the amount of \$1,500,000;

WHEREAS, the Note requires that the Guarantors execute and deliver to the Secured Party, (i) a guaranty guaranteeing all of the obligations of the Company under the Note; and (ii) a Security and Pledge Agreement, granting the Secured Party a lien on and security interest in all of their assets and properties (the “**Security Agreement**”); and

WHEREAS, each Guarantor has determined that the execution, delivery and performance of this Guaranty directly benefits, and is in the best interest of, such Guarantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce the Secured Party to loan funds to the Company pursuant to the Note, each Guarantor hereby agrees with the Secured Party as follows:

SECTION 1. Definitions. Reference is hereby made to the Note for a statement of the terms thereof. All terms used in this Guaranty and the recitals hereto which are defined in the Note, and which are not otherwise defined herein, shall have the same meanings herein as set forth therein. In addition, the following terms when used in the Guaranty shall have the meanings set forth below:

“**Bankruptcy Code**” means Chapter 11 of Title 11 of the United States Code, 11 U.S.C §§ 101 et seq. (or other applicable bankruptcy, insolvency or similar laws).

“**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided, however, for clarification, commercial banks shall not be deemed to be authorized or required by law to remain closed due to “stay at home”, “shelter-in-place”, “non-essential employee” or any other similar orders or restrictions or the closure of any physical branch locations at the direction of any governmental authority so long as the electronic funds transfer systems (including for wire transfers) of commercial banks in New York City generally are open for use by customers on such day.

“**Capital Stock**” means (i) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock (including, without limitation, any warrants, options, rights or other securities exercisable or convertible into equity interests or securities of such Person), and (ii) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person.

“**Collateral**” means all assets and properties of the Company and each Guarantor, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, of every kind and description, tangible or intangible, including, without limitation, the collateral described in Section 2 of the Security Agreement.

“**Company**” shall have the meaning set forth in the recitals hereto.

“**Governmental Authority**” means any nation or government, any Federal, state, city, town, municipality, county, local, foreign or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guaranteed Obligations**” shall have the meaning set forth in Section 2 of this Guaranty.

“**Guarantor**” or “**Guarantors**” shall have the meaning set forth in the recitals hereto.

“**Indemnified Party**” shall have the meaning set forth in Section 13(a) of this Guaranty

“**Insolvency Proceeding**” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, or extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“**Note**” shall have the meaning set forth in the recitals hereto.

“**Obligations**” shall have the meaning set forth in Section 3 of the Security Agreement.

“**Other Taxes**” shall have the meaning set forth in Section 12(a)(iv) of this Guaranty.

“**Paid in Full**” or “**Payment in Full**” means the indefeasible payment in full in cash of all of the Guaranteed Obligations.

“**Person**” means an individual, corporation, limited liability company, partnership, association, joint-stock company, trust, unincorporated organization, joint venture or other enterprise or entity or Governmental Authority.

“**Security Agreement**” shall have the meaning set forth in the recitals hereto.

“**Subsidiary**” and “**Subsidiaries**” shall have the respective meanings given to such terms in the Security Agreement.

“**Taxes**” shall have the meaning set forth in Section 12(a) of this Guaranty.

“**Transaction Party**” means the Company and each Guarantor, collectively, “**Transaction Parties**”.

SECTION 2. Guaranty.

(a) The Guarantors, jointly and severally, hereby unconditionally and irrevocably, guaranty to the Secured Party, the punctual payment, as and when due and payable, by stated maturity or otherwise, of all Obligations, including, without limitation, all interest, make- whole and other amounts that accrue after the commencement of any Insolvency Proceeding of the Company or any Guarantor, whether or not the payment of such interest, make-whole and/or other amounts are enforceable or are allowable in such Insolvency Proceeding, and all fees, interest, premiums, penalties, causes of actions, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under the Note (all of the foregoing collectively being the “**Guaranteed Obligations**”), and agrees to pay any and all costs and expenses (including counsel fees and expenses) incurred by the Secured Party in enforcing any rights under this Guaranty or the Note or the Security Agreement (collectively, the “**Transaction Documents**”). Without limiting the generality of the foregoing, each Guarantor’s liability hereunder shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Company to the Secured Party under the Note but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Transaction Party.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Secured Party, hereby confirms that it is the intention of all such Persons that this Guaranty and the Guaranteed Obligations of each Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal, provincial, state, or other applicable law to the extent applicable to this Guaranty and the Guaranteed Obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Secured Party and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

SECTION 3. Guaranty Absolute; Continuing Guaranty; Assignments.

(a) The Guarantors, jointly and severally, guaranty that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Transaction Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Party with respect thereto. The obligations of each Guarantor under this Guaranty are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce such obligations, irrespective of whether any action is brought against any Transaction Party or whether any Transaction Party is joined in any such action or actions. The liability of any Guarantor under this Guaranty shall be as a primary obligor (and not merely as a surety) and shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives, to the extent permitted by law, any defenses it may now or hereafter have in any way relating to, any or all of the following:

- (i) any lack of validity or enforceability of any Transaction Document;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any Transaction Document, including, without limitation, any increase in the Guaranteed Obligations resulting from the extension of additional credit to any Transaction Party or extension of the maturity of any Guaranteed Obligations or otherwise;

(iii) any taking, exchange, release or non-perfection of any Collateral;

(iv) any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(v) any change, restructuring or termination of the corporate, limited liability company or partnership structure or existence of any Transaction Party;

(vi) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the Guaranteed Obligations, or any manner of sale or other disposition of any Collateral or any other collateral for all or any of the Guaranteed Obligations or any other Obligations of any Transaction Party under the Transaction Documents or any other assets of any Transaction Party or any of its Subsidiaries;

(vii) any failure of the Secured Party to disclose to any Transaction Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party now or hereafter known to the Secured Party (each Guarantor waiving any duty on the part of the Secured Party to disclose such information);

(viii) taking any action in furtherance of the release of any Guarantor or any other Person that is liable for the Obligations from all or any part of any liability arising under or in connection with any Transaction Document without the prior written consent of the Secured Party; or

(ix) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Secured Party that might otherwise constitute a defense available to, or a discharge of, any Transaction Party or any other guarantor or surety.

(b) This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations is rescinded or must otherwise be returned by the Secured Party or any other Person upon the insolvency, bankruptcy or reorganization of any Transaction Party or otherwise, all as though such payment had not been made.

(c) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until Payment in Full of the Guaranteed Obligations (other than inchoate indemnity obligations) and shall not terminate for any reason prior to the respective Maturity Date of the Note (other than Payment in Full of the Guaranteed Obligations) and (ii) be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure to the benefit of and be enforceable by the Secured Party, and its successors, and permitted pledgees, transferees and assigns. Without limiting the generality of the foregoing sentence, the Secured Party may pledge, assign or otherwise transfer all or any portion of its rights and obligations under and subject to the terms of any Transaction Document to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Secured Party herein or otherwise, in each case as provided in the Transaction Documents.

SECTION 4. Waivers. To the extent permitted by applicable law, each Guarantor hereby waives promptness, diligence, protest, notice of acceptance and any other notice or formality of any kind with respect to any of the Guaranteed Obligations and this Guaranty and any requirement that the Secured Party exhaust any right or take any action against any Transaction Party or any other Person or any Collateral. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 4 is knowingly made in contemplation of such benefits. The Guarantors hereby waive any right to revoke this Guaranty, and acknowledge that this Guaranty is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future. Without limiting the foregoing, to the extent permitted by applicable law, each Guarantor hereby unconditionally and irrevocably waives (a) any defense arising by reason of any claim or defense based upon an election of remedies by the Secured Party that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Transaction Parties, any other guarantor or any other Person or any Collateral, and (b) any defense based on any right of set-off or counterclaim against or in respect of the Guaranteed Obligations of such Guarantor hereunder. Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Secured Party to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party or any of its Subsidiaries now or hereafter known by the Secured Party.

SECTION 5. Subrogation. No Guarantor may exercise any rights that it may now or hereafter acquire against any Transaction Party or any other guarantor that arise from the existence, payment, performance or enforcement of any Guarantor's obligations under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Party against any Transaction Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Transaction Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until there has been Payment in Full of the Guaranteed Obligations. If any amount shall be paid to a Guarantor in violation of the immediately preceding sentence at any time prior to Payment in Full of the Guaranteed Obligations and all other amounts payable under this Guaranty, such amount shall be held in trust for the benefit of the Secured Party and shall forthwith be paid to the Secured Party to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Guaranty, whether matured or unmatured, in accordance with the terms of the Transaction Document, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Guaranty thereafter arising. If (a) any Guarantor shall make payment to the Secured Party of all or any part of the Guaranteed Obligations, and (b) there has been Payment in Full of the Guaranteed Obligations, the Secured Party will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

SECTION 6. Representations, Warranties and Covenants.

(a) Each Guarantor, jointly and severally with each other Grantor, hereby represents and warrants with respect to itself and each other Grantor as of the date first written above as follows:

(i) such Guarantor (A) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization as set forth on the signature pages hereto, (B) has all requisite corporate, limited liability company or limited partnership power and authority to conduct its business as now conducted and as presently contemplated and to execute, deliver and perform its obligations under this Guaranty and each other Transaction Document to which such Guarantor is a party, and to consummate the transactions contemplated hereby and thereby and (C) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary except where the failure to be so qualified (individually or in the aggregate) would not result in a Material Adverse Effect.

(ii) The execution, delivery and performance by such Guarantor of this Guaranty and each other Transaction Document to which such Guarantor is a party (A) have been duly authorized by all necessary corporate, limited liability company or limited partnership action, (B) do not and will not contravene its charter, articles, certificate of formation or by-laws, its limited liability company or operating agreement or its certificate of partnership or partnership agreement, as applicable, or any applicable law or any contractual restriction binding on such Guarantor or its properties do not and will not result in or require the creation of any lien, security interest or encumbrance (other than pursuant to any Transaction Document) upon or with respect to any of its properties, and (C) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to it or its operations or any of its properties.

(iii) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or other Person is required in connection with the due execution, delivery and performance by such Guarantor of this Guaranty or any of the other Transaction Documents to which such Guarantor is a party (other than expressly provided for in any of the Transaction Documents).

(iv) This Guaranty has been duly executed and delivered by each Guarantor and is, and each of the other Transaction Documents to which such Guarantor is or will be a party, when executed and delivered, will be, a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms, except as may be limited by the Bankruptcy Code or other applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, suretyship or similar laws and equitable principles (regardless of whether enforcement is sought in equity or at law).

(v) There is no pending or, to the best knowledge of such Guarantor, threatened action, suit or proceeding against such Guarantor or to which any of the properties of such Guarantor is subject, before any court or other Governmental Authority or any arbitrator that (A) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (B) relates to this Guaranty or any of the other Transaction Documents to which such Guarantor is a party or any transaction contemplated hereby or thereby.

(vi) Such Guarantor (A) has read and understands the terms and conditions of the Transaction Documents, and (B) now has and will continue to have independent means of obtaining information concerning the affairs, financial condition and business of the Company and the other Transaction Parties, and has no need of, or right to obtain from the Secured Party, any credit or other information concerning the affairs, financial condition or business of the Company or the other Transaction Parties.

(vii) There are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

(b) Each Guarantor covenants and agrees that until Payment in Full of the Guaranteed Obligations, it will comply with each of the covenants (except to the extent applicable only to a public company) which are set forth in the Note as if such Guarantor were a party thereto.

SECTION 7. Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, the Secured Party may, and is hereby authorized to, at any time and from time to time, without notice to the Guarantors (any such notice being expressly waived by each Guarantor) and to the fullest extent permitted by law, set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Secured Party to or for the credit or the account of any Guarantor against any and all obligations of the Guarantors now or hereafter existing under this Guaranty or any other Transaction Document, irrespective of whether or not the Secured Party shall have made any demand under this Guaranty or any other Transaction Document and although such obligations may be contingent or unmatured. The Secured Party agrees to notify the relevant Guarantor promptly after any such set-off and application made by the Secured Party, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Secured Party under this Section 7 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Secured Party may have under this Guaranty or any other Transaction Document in law or otherwise.

SECTION 8. Limitation on Guaranteed Obligations.

(a) Notwithstanding any provision herein contained to the contrary, each Guarantor's liability hereunder shall be limited to an amount not to exceed as of any date of determination the greater of:

(i) the amount of all Guaranteed Obligations, plus interest thereon at the applicable Interest Rate as specified in the Note; and

(ii) the amount which could be claimed by the Secured Party from any Guarantor under this Guaranty without rendering such claim voidable or avoidable under the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law after taking into account, among other things, Guarantor's right of contribution and indemnification.

(b) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guaranty hereunder or affecting the rights and remedies of the Secured Party hereunder or under applicable law.

(c) No payment made by the Company, any Guarantor, any other guarantor or any other Person or received or collected by the Secured Party from the Company, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Guaranteed Obligations or any payment received or collected from such Guarantor in respect of the Guaranteed Obligations), remain liable for the Guaranteed Obligations up to the maximum liability of such Guarantor hereunder until after all of the Guaranteed Obligations and all other amounts payable under this Guaranty shall have been Paid in Full.

SECTION 9. Notices, Etc. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Guaranty must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by facsimile (provided confirmation of transmission is mechanically or electronically generated and kept on file by the sending party); or (iii) one (1) Business Day after deposit with a nationally recognized overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. All notices and other communications provided for hereunder shall be sent, if to any Guarantor, to the Company's address and/or facsimile number, or if to the Secured Party, to it at its respective address and/or facsimile number, each as set forth in Section 6.6 of the Note.

SECTION 10. Governing Law; Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Guaranty shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdiction other than the State of New York. Each Guarantor hereby irrevocably submits to the 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 under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim, obligation or defense 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 at the address for such notices to it under Section 6.6 of the Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Secured Party from bringing suit or taking other legal action against any Guarantor in any other jurisdiction to collect on a Guarantor's obligations or to enforce a judgment or other court ruling in favor of the Secured Party.

SECTION 11. WAIVER OF JURY TRIAL, ETC. EACH GUARANTOR HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR UNDER ANY OTHER TRANSACTION DOCUMENT OR IN CONNECTION WITH OR ARISING OUT OF THIS GUARANTY, ANY OTHER TRANSACTION DOCUMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY.

SECTION 12. Taxes.

(a) All payments made by any Guarantor hereunder or under any other Transaction Document shall be made in accordance with the terms of the respective Transaction Document and shall be made without set-off, counterclaim, withholding, deduction or other defense. Without limiting the foregoing, all such payments shall be made free and clear of and without deduction or withholding for any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on the net income of the Secured Party by the jurisdiction in which the Secured Party is organized or where it has its principal lending office (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities, collectively or individually, "**Taxes**"). If any Guarantor shall be required to deduct or to withhold any Taxes from or in respect of any amount payable hereunder or under any other Transaction Document:

(i) the amount so payable shall be increased to the extent necessary so that after making all required deductions and withholdings (including Taxes on amounts payable to the Secured Party pursuant to this sentence) the Secured Party receives an amount equal to the sum it would have received had no such deduction or withholding been made,

(ii) such Guarantor shall make such deduction or withholding,

(iii) such Guarantor shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law, and

(iv) as promptly as possible thereafter, such Guarantor shall send the Secured Party an official receipt (or, if an official receipt is not available, such other documentation as shall be satisfactory to the Secured Party, as the case may be) showing payment. In addition, each Guarantor agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Guaranty or any other Transaction Document (collectively, "**Other Taxes**").

(b) Each Guarantor hereby indemnifies and agrees to hold each Indemnified Party harmless from and against Taxes or Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 12) paid by any Indemnified Party as a result of any payment made hereunder or from the execution, delivery, registration or enforcement of, or otherwise with respect to, this Guaranty or any other Transaction Document, and any liability (including penalties, interest and expenses for nonpayment, late payment or otherwise) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be paid within thirty (30) days from the date on which the Secured Party makes written demand therefor, which demand shall identify the nature and amount of such Taxes or Other Taxes.

(c) If any Guarantor fails to perform any of its obligations under this Section 12, such Guarantor shall indemnify the Secured Party for any taxes, interest or penalties that may become payable as a result of any such failure. The obligations of the Guarantors under this Section 12 shall survive the termination of this Guaranty and the payment of the Obligations and all other amounts payable hereunder.

SECTION 13. Indemnification.

(a) Without limitation of any other obligations of any Guarantor or remedies of the Secured Party under this Guaranty or applicable law, except to the extent resulting from such Indemnified Party's gross negligence, fraud or willful misconduct, as determined by a final judgment of a court of competent jurisdiction no longer subject to appeal, each Guarantor shall, to the fullest extent permitted by law, indemnify, defend and save and hold harmless the Secured Party and each of its affiliates and its officers, directors, employees, agents and advisors (each, an "**Indemnified Party**") from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party in connection with or as a result of any failure of any Guaranteed Obligations to be the legal, valid and binding obligations of any Transaction Party enforceable against such Transaction Party in accordance with their terms.

(b) Each Guarantor hereby also agrees that none of the Indemnified Parties shall have any liability (whether direct or indirect, in contract, tort or otherwise) or any fiduciary duty or obligation to any of the Guarantors or any of their respective affiliates or any of their respective officers, directors, employees, agents and advisors, and each Guarantor hereby agrees not to assert any claim against any Indemnified Party on any theory of liability, for special, indirect, consequential, incidental or punitive damages arising out of or otherwise relating to the facilities, the actual or proposed use of the proceeds of the advances, the Transaction Documents or any of the transactions contemplated by the Transaction Documents.

SECTION 14. Miscellaneous.

(a) Each Guarantor will make each payment hereunder in lawful money of the United States of America and in immediately available funds to the Secured Party, at such address specified by the Secured Party from time to time by notice to the Guarantors.

(b) No amendment or waiver of any provision of this Guaranty and no consent to any departure by any Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by each Guarantor, the Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) No failure on the part of the Secured Party to exercise, and no delay in exercising, any right or remedy hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder or under any Transaction Document preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of the Secured Party provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights and remedies of the Secured Party under any Transaction Document against any party thereto are not conditional or contingent on any attempt by the Secured Party to exercise any of their respective rights or remedies under any other Transaction Document against such party or against any other Person.

(d) Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(e) This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until Payment in Full of the Guaranteed Obligations (other than inchoate indemnity obligations) and shall not terminate for any reason prior to the respective Maturity Date of each Note (other than Payment in Full of the Guaranteed Obligations) and (ii) be binding upon each Guarantor and its respective successors and assigns. This Guaranty shall inure, together with all rights and remedies of the Secured Party hereunder, to the benefit of and be enforceable by the Secured Party and its successors, and permitted pledgees, transferees and assigns. Without limiting the generality of the foregoing sentence, the Secured Party may pledge, assign or otherwise transfer all or any portion of its rights and obligations under and subject to the terms of any other Transaction Document to any other Person in accordance with the terms thereof, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Secured Party (as applicable) herein or otherwise, in each case as provided in such Transaction Document. None of the rights or obligations of any Guarantor hereunder may be assigned or otherwise transferred without the prior written consent of the Secured Party.

(f) This Guaranty and the other Transaction Documents reflect the entire understanding of the transaction contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.

(g) Section headings herein are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.

SECTION 15. Currency Indemnity.

If, for the purpose of obtaining or enforcing judgment against Guarantor in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 15 referred to as the “**Judgment Currency**”) an amount due under this Guaranty in any currency (the “**Obligation Currency**”) other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding (a) the date of actual payment of the amount due, in the case of any proceeding in the courts of the jurisdiction that will give effect to such conversion being made on such date, or (b) the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 15 being hereinafter in this Section 15 referred to as the “**Judgment Conversion Date**”).

If, in the case of any proceeding in the court of any jurisdiction referred to in the preceding paragraph, there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt of the amount due in immediately available funds, the Guarantors shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from the Guarantors under this Section 15 shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Guaranty.

SECTION 16. Amendment and Restatement. Each party hereto agrees that this Guaranty is an amendment and restatement of the Existing Guaranty in its entirety and is given in renewal and replacement (but not extinguishment) of the Existing Guaranty.

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IN WITNESS WHEREOF, each Guarantor has caused this Guaranty to be executed by its respective duly authorized officer, as of the date first above written.

GUARANTORS:

AKERNA SERVICES, LLC

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

MJ FREEWAY, LLC

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer

[Signatures continue on following page]

ACCEPTED BY:

MJ Acquisition Corp.,
as Secured Party

By: /s/ Scott Ogur

Name: Scott Ogur

Title: Authorized Representative

AMENDED AND RESTATED SUBORDINATION AND INTERCREDITOR AGREEMENT

This AMENDED AND RESTATED SUBORDINATION AND INTERCREDITOR AGREEMENT (as the same may be amended, modified and/or restated from time to time, this "**Agreement**") is entered into as of October 11, 2023, by and among (a) HT Investments MA LLC, as collateral agent under the Security Agreement (as defined below) (the "**Senior Agent**"), each on behalf of the respective Senior Lenders (as hereinafter defined) (such Senior Lenders and the Senior Agent, together, the "**Senior Creditors**"), (b) the Subordinated Creditor (as hereinafter defined), and (c) Akerna Corp. (the "**Borrower**"), and together with each other Subsidiary and/or Affiliate that becomes obligated to repay indebtedness outstanding under any of the Senior Credit Agreements, each individually a "**Credit Party**" and collectively, the "**Credit Parties**").

WITNESSETH:

WHEREAS, the Borrower, the other Credit Parties and the Senior Lenders have entered into that certain Securities Purchase Agreement, dated as of October 5, 2021 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**2021 Securities Purchase Agreement**"), pursuant to which the Borrower sold senior secured convertible notes of the Borrower to Senior Lender (the "**Notes**").

WHEREAS, in connection with the execution of the 2021 Securities Purchase Agreement, the Credit Parties entered into that certain Amended and Restated Security and Pledge Agreement dated as of October 5, 2021 (the "**Security Agreement**"), that certain Amended and Restated Intellectual Property Security Agreement dated October 5, 2021 (the "**Intellectual Property Security Agreement**") and a guaranty dated October 5, 2021 (the "**Guaranty**") pursuant to which, among other things, the Credit Parties agreed to secure their obligations arising under and related to the 2021 Securities Purchase Agreement and guaranty the payment of the Borrower's obligations under the Notes (in each case as the same may be amended, restated, extended, restructured, refinanced, replaced, supplemented or otherwise modified from time to time, collectively, the 2021 Securities Purchase Agreement, the Security Agreement, the Intellectual Property Security Agreement and the Guaranty, the "**Senior Credit Agreements**").

WHEREAS, the Borrower, the other Credit Parties and MJA (together with its respective successors and assigns, the "**Subordinated Creditor**"), entered into that certain Amended and Restated Secured Promissory Note, Amended and Restated Security and Pledge Agreement, Amended and Restated Intellectual Property Security Agreement and Amended and Restated Guaranty, each dated as of the date hereof (as each may be amended, restated, supplemented or otherwise modified from time to time as permitted hereby, and together with all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, restated, extended, restructured, refinanced, replaced, supplemented or otherwise modified from time to time as permitted hereunder, the "**Subordinated Notes Documents**"), pursuant to which, among other things, the Subordinated Creditor shall agree, subject to the terms and conditions set forth in the Subordinated Notes Documents, to make certain loans and financial accommodations to the Borrower. All of the Credit Parties' obligations to the Subordinated Creditor under the Subordinated Notes Documents and the other Subordinated Debt Documents (as hereinafter defined) shall be joint and several, cross-guaranteed, and secured on a subordinated basis by liens on and security interests in the Collateral and guaranteed by the Credit Parties (to the extent such Credit Parties are not already directly liable therefor).

WHEREAS, as an inducement to and as one of the conditions precedent to the agreement of Senior Creditors and the Subordinated Creditor to consummate the transactions contemplated by the Senior Credit Agreements and the Subordinated Notes Documents, respectively, the Senior Creditors and Subordinated Creditor have required the execution and delivery of this Agreement by the Subordinated Creditor and the Credit Parties in order to set forth the relative rights and priorities of the Senior Creditors and Subordinated Creditor under the Senior Debt Documents and the Subordinated Debt Documents.

NOW, THEREFORE, in order to induce the Senior Creditors and the Subordinated Creditor to consummate the transactions contemplated by the Senior Credit Agreements and the Subordinated Notes Documents, respectively, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings in this Agreement:

“**Affiliate**” means, with respect to any Person, each officer, director, general partner or joint-venturer of such Person and any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession of either (a) the power to vote, or the beneficial ownership of, 10% or more of the voting Stock of such Person (either directly or through the ownership of Stock Equivalents) or (b) the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, as amended, and any rules and regulations promulgated thereunder.

“**Business Day**” means any day that is not a Saturday, Sunday or a day on which banks are required or authorized to close in New York.

“**Collateral**” means all of the assets of any Obligor, whether real, personal or mixed, with respect to which a Lien is granted or purported to be granted as security for any Senior Debt or Subordinated Debt.

“**DIP Financing**” has the meaning assigned to such term in Section 2.02(c) hereof.

“**Disposed Credit Party**” has the meaning assigned to such term in Section 2.06(f)(i) hereof.

“**Disqualified Stock**” means any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to October 5, 2024; or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time on or prior to October 5, 2024.

“**Distressed Disposal**” has the meaning assigned to such term in Section 2.06(f) hereof.

“**Distribution**” means, with respect to any indebtedness, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such indebtedness or obligation, (b) any redemption, purchase or other acquisition of such indebtedness or obligation by any Person, or (c) the granting of any Lien to or for the benefit of the holders of such indebtedness or obligation in or upon any property of any Person.

“**Enforcement Action**” means (a) to take from or for the account of any Obligor or any guarantor of the Subordinated Debt, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by any Obligor or any such guarantor with respect to the Subordinated Debt, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding against any Obligor or any such guarantor to (i) enforce payment of or to collect the whole or any part of the Subordinated Debt, (ii) commence or join with other Persons to commence an Insolvency Proceeding, or (iii) commence judicial or non-judicial enforcement of any of the rights and remedies under the Subordinated Debt Documents or applicable law with respect to the Subordinated Debt, (c) to accelerate the Subordinated Debt, (d) to exercise any put option or to cause any Obligor or any such guarantor to honor any redemption or mandatory prepayment obligation under any Subordinated Debt Document, (e) to notify account debtors or directly collect accounts receivable or other payment rights of any Obligor, (f) to take any action with respect to the Subordinated Debt under the provisions of any state or federal law, or other applicable law, including the UCC or the laws of any foreign jurisdiction or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of any Obligor or any such guarantor, (g) to give a notice to any court or governmental authority or any Obligor indicating an intent to take any of the actions described above in this definition or appoint a receiver, interim receiver or trustee of any Obligor or of any Obligor’s assets; or (h) to Exercise Any Secured Creditor Remedies; **provided**, that the term “Enforcement Action” shall not include the receiving and retaining of Permitted Subordinated Debt Payments, in each case, to the extent permitted hereunder.

“**Equity Interest**” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity interests in any Person, and any option, or warrant to acquire any such capital stock, partnership interests, membership interests, beneficial interests or equity interests.

“**Exercise Any Secured Creditor Remedies**” or “**Exercise of Secured Creditor Remedies**” means, in each case, with respect to the Senior Agent and the Senior Creditors or the Subordinated Creditor, with respect to the Collateral (and/or the proceeds thereof): (a) the taking of any action to enforce or realize upon any Lien, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC or foreign law equivalent; (b) the exercise of any right or remedy provided to a secured creditor or otherwise on account of a Lien under the Senior Debt Documents, the Subordinated Debt Documents, applicable law or in an Insolvency Proceeding, including the election to retain Collateral (or the proceeds thereof) in satisfaction of a Lien; (c) the taking of any action or the exercise of any right or remedy in respect of the collection on, set-off against, marshaling of, or foreclosure on the Collateral (or the proceeds thereof) (including the notification of account debtors); (d) the sale, conveyance, assignment, transfer, lease, license, or other disposition of all or any portion of the Collateral (or proceeds thereof), by private or public sale, other disposition or any other means permissible under applicable law; (e) the solicitation of bids from third parties to conduct the liquidation of any Collateral (or the proceeds thereof); (f) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers or other third parties for the purposes of valuing, marketing, promoting and selling the Collateral (or the proceeds thereof); (g) the exercise of any other enforcement rights or secured creditor remedy (including the exercise of any voting rights relating to any capital stock and including any right of recoupment or set-off) whether under the Senior Debt Documents, the Subordinated Debt Documents, applicable law or in an Insolvency Proceeding or otherwise, or (h) the commencement of, or the joinder with any creditor in commencing any Insolvency Proceeding against any Obligor or any of its Subsidiaries or any assets of any Obligor or any of its Subsidiaries; **provided**, that Exercise of Secured Creditor Remedies shall be deemed not to include the receiving and retaining of Permitted Subordinated Debt Payments, in each case, to the extent permitted hereunder.

“**Governmental Authority**” means any nation, sovereign or government, any state or other political subdivision thereof, any agency, authority or instrumentality thereof and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity (including the European Union and the European Central Bank) and any self-regulatory organization (including the National Association of Insurance Commissioners).

“**Guarantee Liabilities**” means, in relation to any Credit Party, the liabilities and obligations under the Senior Debt Documents and/or Subordinated Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to another Credit Party as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Debt Documents and/or the Subordinated Debt Documents).

“**Insolvency Proceeding**” means:

- (a) any voluntary or involuntary case or proceeding under any Bankruptcy Code with respect to a Person;
- (b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership or interim receivership, liquidation or other similar case or proceeding with respect to a Person or with respect to a material portion of its assets;
- (c) any liquidation, dissolution, or winding up of a Person whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;
- (d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of a Person; or
- (e) any foreign law equivalent of the foregoing.

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or otherwise), security interest or other security arrangement and any other preference, priority or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a capital lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

“**Obligors**” means the Credit Parties and each of their respective Subsidiaries.

“**Other Obligations**” means, in relation to any Obligor, any trading and other liabilities it may have to another Obligor.

“**Paid in Full**,” “**Payment in Full**,” “**paid in full**” or “**payment in full**” mean, as of any date of determination with respect to the Senior Debt, that: (a) all of such Senior Debt has been (i) paid in full in cash and no written demand has been received by Senior Agent or Senior Lenders within ninety (90) days of such payment for Senior Agent and/or Senior Lenders to return such payment, or any part thereof, as a preferential or fraudulent transfer pursuant to the Bankruptcy Code or any state law equivalent, and/or (ii) otherwise converted into Stock and (b) the termination of all commitments to make loans or otherwise to extend credit under any Senior Debt Document, such that no further Senior Debt may become outstanding. If a demand under subclause (a)(i) is received, the Senior Debt will not be considered “Paid in Full” until the earlier of such demand being withdrawn or denied, and if payment is returned in connection with such demand, the Senior Debt will not be considered “Paid in Full” until such time, if ever, that both clauses (a) and (b) of this definition are subsequently satisfied.

“**Permitted Refinancing Senior Debt Documents**” means any financing documentation which replaces the Senior Loan Documents (or any Permitted Refinancing Senior Debt Documents) and pursuant to which the Senior Debt under the Senior Loan Documents (or any Permitted Refinancing Senior Debt Documents) is refinanced, extended, restructured or replaced, as such financing documentation may be amended, restated, supplemented or otherwise modified from time to time.

“**Permitted Refinancing Subordinated Debt Documents**” means any financing documentation which replaces the Subordinated Notes Documents (or any Permitted Refinancing Subordinated Debt Documents) and pursuant to which the Subordinated Debt under the Subordinated Notes Documents (or any Permitted Refinancing Subordinated Debt Documents) is refinanced, extended, restructured or replaced, as such financing documentation may be amended, restated, supplemented or otherwise modified from time to time in compliance with this Agreement, but specifically excluding any such financing documentation to the extent that it contains, either initially or by amendment or other modification, any terms, conditions, covenants or defaults other than those which (a) then exist in the Subordinated Notes Documents (or any Permitted Refinancing Subordinated Debt Documents), or (b) could be included in the Subordinated Notes Documents (or any Permitted Refinancing Subordinated Debt Documents) by an amendment or other modification that would not be prohibited by the terms of this Agreement.

“**Permitted Senior Debt Refinancing**” means any refinancing, extension, restructuring or replacement of the Senior Debt under the Senior Loan Documents (or any Permitted Refinancing Senior Debt Documents), provided that the financing documentation entered into by the Obligors in connection with such Permitted Senior Debt Refinancing constitute Permitted Refinancing Senior Debt Documents.

“**Permitted Subordinated Debt Payments**” means (a) payments for which Subordinated Creditor obtains the prior written consent from the Senior Agent (in Senior Agent’s sole and absolute discretion) and (b) payments during an Insolvency Proceeding of an Obligor paid through Reorganization Subordinated Securities in accordance with the term and conditions of Section 2.02, in each instance, due and payable in accordance with the terms of the Subordinated Debt Documents as in effect on the date hereof or as modified in accordance with the terms of this Agreement.

“**Permitted Subordinated Debt Refinancing**” means any refinancing, extension, restructuring or replacement of the Subordinated Debt under the Subordinated Debt Documents (or any Permitted Refinancing Subordinated Debt Documents) provided that (i) such refinancing, extension, restructuring or replacement is approved in writing by the Senior Agent and Senior Creditors and (ii) the financing documentation entered into by the Obligors in connection with such Permitted Subordinated Debt Refinancing constitute Permitted Refinancing Subordinated Debt Documents.

“**Person**” means any individual, partnership, corporation (including a business trust and a public benefit corporation), joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity or Governmental Authority.

“**Proceeds**” means “proceeds” as defined in Article 9 of the UCC and all products of the Collateral and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the Collateral, all property received wholly or partly in trade or exchange for any of the Collateral, all leases of any of the Collateral, and all rents, revenues, issues, profits, and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition, of any of the Collateral or any interest therein.

“**Receiving Credit Party**” has the meaning assigned to such term in Section 2.06(f)(i) hereof.

“**Release Event**” means any sale or other disposition of Collateral (a) in connection with any Exercise of Secured Creditor Remedies by the Senior Agent or Senior Creditors, (b) by one or more Obligors with the consent of the Senior Agent or Senior Creditors either (i) after the occurrence and during the continuance of a Default (as defined in the Senior Credit Agreements) or an Event of Default (as defined in the Senior Credit Agreements), or (ii) in a sale during an Insolvency Proceeding (including a sale pursuant to Section 363 of the Bankruptcy Code or pursuant to a plan of reorganization) or (c) permitted by the Senior Debt Documents (whether or not there exists a Default or an Event of Default under the Senior Debt Documents).

“**Reorganization Subordinated Securities**” means any unsecured debt securities or equity securities of any Obligor or any other Person that are distributed to any Subordinated Creditor in respect of the Subordinated Debt pursuant to a confirmed plan of reorganization or similar dispositive restructuring plan in connection with any Insolvency Proceeding (which results in the Payment in Full of the Senior Debt or is otherwise consented to in writing by the Senior Creditors) and which securities (a) are, if such Reorganization Subordinated Securities are debt securities, subordinated in right of payment to the Senior Debt (and all debt or equity securities issued in substitution of all or any portion of the Senior Debt) to the same extent as the Subordinated Debt is subordinated to the Senior Debt, (b) have maturities and other terms no less advantageous to Obligors and Senior Creditors than the terms contained in the Subordinated Debt Documents or modifications thereof that would not be prohibited by the terms of this Agreement, (c) are, if such Reorganization Subordinated Securities are preferred equity securities, not Disqualified Equity, and (d) are, if such Reorganization Subordinated Securities are common equity securities, subject to terms that require the Subordinated Creditor to, at all times prior to the Payment in Full of all Senior Debt, turn over to the Senior Agent (for the benefit of the Senior Creditors) all cash dividends or other cash distributions received by the Subordinated Creditor in respect of such common equity securities.

“**Senior Debt**” means all obligations, liabilities and indebtedness of every nature of the Obligors from time to time owed to any Senior Creditor under the Senior Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees (including any make-whole amount), legal fees, premium, indemnities, guaranties, charges, costs and expenses, any obligation and amounts in respect of any DIP Financing or use of cash collateral in any proceeding, whether primary, secondary, direct, contingent, joint or several, liquidated or unliquidated, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Insolvency Proceeding under the Bankruptcy Code together with any interest, fees, premiums, costs and expenses accruing thereon after the commencement of an Insolvency Proceeding, without regard to whether or not such interest, fees, premiums, indemnities, costs and expenses are an allowed claim.

“**Senior Debt Documents**” means the Senior Loan Documents and, after the consummation of any Permitted Senior Debt Refinancing, the Permitted Refinancing Senior Debt Documents.

“**Senior Loan Documents**” means the Senior Credit Agreements and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, restated, extended, restructured, refinanced, replaced, supplemented or otherwise modified from time to time as permitted hereunder.

“**Stock**” means all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting.

“**Stock Equivalents**” means all securities convertible into or exchangeable for Stock or any other Stock Equivalent and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any Stock or any other Stock Equivalent, whether or not presently convertible, exchangeable or exercisable.

“**Subordinated Debt**” means all obligations, liabilities and indebtedness of every nature of the Obligors from time to time owed to the any Subordinated Creditor under the Subordinated Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, legal fees, premium, indemnities, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of an Insolvency Proceeding under the Bankruptcy Code together with any interest, fees, premiums, costs and expenses accruing thereon after the commencement of an Insolvency Proceeding, without regard to whether or not such interest, fees, premiums, indemnities, costs and expenses are an allowed claim.

“**Subordinated Debt Documents**” means the Subordinated Notes Documents and, after the consummation of any Permitted Subordinated Debt Refinancing, the Permitted Refinancing Subordinated Debt Documents.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, joint venture, limited liability company, association or other entity, the management of which is, directly or indirectly, controlled by, or of which an aggregate of more than fifty percent (50%) of the voting Stock is, at the time, owned or controlled directly or indirectly by, such Person or one or more Subsidiaries of such Person.

“**UCC**” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect from time to time in the State of New York.

2. Subordination and Standstill

2.01 Subordination of Subordinated Debt and Liens to Senior Debt.

(a) Each Obligor covenants and agrees, and Subordinated Creditor likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Debt Documents, that the payment of any and all of the Subordinated Debt shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the prior Payment in Full of the Senior Debt. Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Agreement.

(b) Notwithstanding (i) the date, time, method, manner or order of grant, attachment, or perfection of any Liens granted to the Senior Agent (or any Senior Creditor) or any Subordinated Creditor in respect of all or any portion of the Collateral, (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the Senior Agent (or any Senior Creditor) or any Subordinated Creditor in any Collateral, (iii) any provision of the UCC or foreign law equivalent, any other applicable law, any of the Senior Debt Documents or the Subordinated Debt Documents, (iv) whether the Liens securing all or part of the Senior Debt are valid, perfected, enforceable, void, avoidable, subordinated, disputed, or allowed, (v) the fact that any such Liens in favor of the Senior Agent (or Senior Creditor) securing the Senior Debt are (x) subordinated to any Lien securing any obligation of any Obligor other than the Subordinated Debt or (y) otherwise subordinated, voided, avoided, invalidated or lapsed, or (vi) any other circumstance whatsoever, the Senior Agent, on behalf of themselves and the other Senior Creditors, and Subordinated Creditor, hereby agree that:

(i) any Lien in respect of all or any portion of the Collateral now or hereafter held by or on behalf of any Subordinated Creditor that secures all or any portion of the Subordinated Debt, shall in all respects be junior and subordinate to all Liens granted to the Senior Agent or any Senior Creditor in the Collateral to secure all or any portion of the Senior Debt, and

(ii) any Lien in respect of all or any portion of the Collateral now or hereafter held by or on behalf of the Senior Agent or any Senior Creditor that secures all or any portion of the Senior Debt shall in all respects be senior and prior to all Liens granted to any Subordinated Creditor in the Collateral to secure all or any portion of the Subordinated Debt.

2.02 Obligor Liquidation, Dissolution, Bankruptcy.

(a) In the event of any Insolvency Proceeding involving any Obligor:

(i) The Senior Debt shall first be Paid in Full before any Distribution, whether in cash, securities or other property, shall be made to any Subordinated Creditor on account of any Subordinated Debt.

(ii) Any Distribution, whether in cash, securities or other property that would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Debt (other than Permitted Subordinated Debt Payments) shall be paid or delivered directly to Senior Agent (to be applied by the Senior Agent to the Senior Debt in accordance with the terms of the Senior Debt Documents as if the Distributions were a payment thereunder until the Senior Debt is Paid in Full). To facilitate the foregoing, Subordinated Creditor irrevocably authorizes, empowers and directs any debtor, debtor in possession, receiver, interim receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to the Senior Agent (to be applied by the Senior Agent to the Senior Debt in accordance with the terms of the Senior Debt Documents as if the Distributions were a payment thereunder until the Senior Debt is Paid in Full). Subordinated Creditor also irrevocably authorizes and empowers the Senior Agent, in the name of each and/or any Subordinated Creditor, to demand, sue for, collect and receive any and all such Distributions.

(iii) Subordinated Creditor hereby irrevocably authorizes, empowers and appoints the Senior Agent as agent and attorney-in-fact for Subordinated Creditor to (in the place and stead of Subordinated Creditor and in the name of the Subordinated Creditor or in the Senior Agent's own name, from time to time, in the Senior Agent's and Senior Creditors' sole discretion) (1) execute, verify, deliver and file proofs of claim and any necessary amendments thereto with respect to the Subordinated Debt, (2) enter into any settlement, compromise or other modification with respect to the Subordinated Debt with the Obligors, and (3) vote on behalf of the Subordinated Creditor with respect to any claim with respect to the Subordinated Debt in any such Insolvency Proceeding; **provided**, that the Senior Agent shall not have any obligation to execute, verify, deliver, file, settle and/or vote any such proof of claim. If the Senior Agent votes any claim in accordance with the authority granted hereby, no Subordinated Creditor shall be entitled to change or withdraw such vote.

(b) This Agreement is intended to be enforceable as a subordination agreement notwithstanding the commencement of any Insolvency Proceeding, including under Bankruptcy Code Section 510 and any comparable provision of otherwise applicable law.

(c) If any Obligor shall be subject to any Insolvency Proceeding and the Senior Agent or any Senior Creditor shall desire to permit (or not object to) the use of cash collateral (within the meaning of Section 363 of the Bankruptcy Code), to provide any such Obligor with financing under Section 363 or Section 364 of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) or to permit (or not object to) the provision of such financing by any third party (collectively, "**DIP Financing**"), including to be secured by all or any portion of the Collateral, then Subordinated Creditor will be deemed to have consented to such use of cash collateral and/or DIP Financing, and agrees that it will not raise any objection to such use of cash collateral and/or DIP Financing or request adequate protection (other than adequate protection in the form of, if the Senior Agent and/or Senior Creditors are granted adequate protection in the form of a Lien, a Lien that is subordinated to the Lien of the Senior Agent and the Senior Creditors and/or to the lien of the provider of such DIP Financing at least to the extent set forth in this Agreement) or any other relief in connection with its or their interest in any such Collateral and hereby otherwise waives any right it or the Subordinated Creditor may otherwise have to adequate protection of its or their interest in the Collateral; provided, that the Subordinated Creditor retain a Lien on the Collateral to the same extent and with the same priority as existed prior to the commencement of such Insolvency Proceeding and subject in all respects to the terms set forth herein. Subordinated Creditor hereby agrees that the Liens of any Subordinated Creditor in the Collateral shall be subordinated to the liens securing such DIP Financing (and all obligations relating thereto) to the extent and upon the terms and conditions specified in this Agreement. Until the Senior Debt has been Paid in Full, without the Senior Agent's prior written consent to the contrary, Subordinated Creditor agrees that neither it nor any Subordinated Creditor shall, directly or indirectly propose to, seek to provide to, otherwise support, or enter into, any DIP Financing with any Obligor.

(d) Until the Senior Debt has been Paid in Full, without the Senior Agent's prior written consent to the contrary, Subordinated Creditor agrees that it shall not, directly or indirectly, (i) file any pleadings or motions, take any position at any hearing or proceeding of any nature, or otherwise take any action whatsoever, in each case in respect of any of the Collateral, including with respect to the determination of any Liens or claims held by Senior Agent (including the validity and enforceability thereof) or any other Senior Creditors or the value of any claims of such parties under Section 506(a) of the Bankruptcy Code or otherwise (provided, that Subordinated Creditor may file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims for any of the Subordinated Debt, in each case, only to the extent not in contravention or inconsistent with the terms, conditions and intent of this Agreement (including, without limitation, Section 2.02(a)(iii), Section 2.02(c) and the other provisions of this Section 2.02(d)) and only to the extent not adverse to the priority status of the Liens, claims and rights of the Senior Creditors), (ii) seek relief from the automatic stay of Section 362 of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) or any other stay in any Insolvency Proceeding in respect of any portion of the Collateral, (iii) propose or support any plan of reorganization or file any motion or pleading (or otherwise vote) in support of any motion or plan that is not supported by the Senior Agent and the Senior Creditors (unless such plan or motion provides for the Payment in Full of the Senior Debt) or that would challenge the enforceability of the Senior Debt or the Liens securing same, (iv) oppose any relief requested or supported by the Senior Agent or Senior Creditors in connection with any sale or other disposition free and clear of the Subordinated Creditor's Liens under Section 363(f) of the Bankruptcy Code or any other similar provision of applicable law (and Subordinated Creditor hereby consents to any such relief requested or supported by the Senior Agent or Senior Creditors), (v) object to any professional expense or other similar carve-out agreed to by the Senior Agent and Senior Creditors, (vi) object to any sale of all or any portion of the Collateral or any related bidding procedures in accordance with Sections 363 or 365 of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding), or in accordance with a court order entered in an Insolvency Proceeding, (vii) object to any claim by the Senior Agent or Senior Creditors for allowance of Senior Debt consisting of post-petition interest, fees or expenses to the extent of the value of the Senior Agent's Lien, (viii) object to any request by the Senior Agent or Senior Creditors for adequate protection of its Liens or contest any objection by the Senior Agent or Senior Creditors to any motion, relief, action, or proceeding based on the Senior Agent or Senior Creditors claiming a lack of adequate protection, (ix) seek or request any adequate protection of its Liens (other than as permitted by Section 2.02(c) above), or (x) undertake a "credit bid" in respect of all or any portion of the Collateral in any foreclosure proceeding or other action or proceeding, unless such bid provides for and is contingent upon the Payment in Full of the Senior Debt and the proceeds are applied to Pay in Full the Senior Debt. Subordinated Creditor waives any claim it may now or hereafter have against the Senior Agent or any Senior Creditor arising out of the election of the Senior Agent or any Senior Creditor, in any case instituted under the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding), of the application of Section 1111(b)(2) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding). Subordinated Creditor agrees that it will not, directly or indirectly, assert or support the assertion of, and hereby waives any right that it may have to assert or support the assertion of, any surcharge under Section 506(c) or the "equities of the case" exception of Section 552(b) of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) as against the Senior Agent or any Senior Creditor or with respect to any of the Collateral.

2.03 Subordinated Debt Payment Restrictions. Notwithstanding the terms of the Subordinated Debt Documents, without the prior written consent of the Senior Agent and Senior Creditors, no Subordinated Creditor will take, demand, receive or accept from any Obligor, and no Obligor will make to any Subordinated Creditor, any Distribution or any payment of principal, interest, fees or expenses (whether optional, voluntary, mandatory, or otherwise or by set-off, redemption, defeasance, or other payment or distribution) with respect to any Subordinated Debt until the Senior Debt is Paid in Full other than Permitted Subordinated Debt Payments.

2.04 Subordinated Debt Standstill Provisions. Until the earlier of the Payment in Full of the Senior Debt, Subordinated Creditor agrees that it shall not, without the prior written consent of the Senior Agent and Senior Creditors, take any Enforcement Action with respect to the Subordinated Debt or Exercise Any Secured Creditor Remedies or any other enforcement rights as against any Obligor or its assets.

2.05 Incorrect Payments. If any Distribution or other payment (other than a Permitted Subordinated Debt Payment) is received by any Subordinated Creditor in violation of this Agreement, or any other proceeds (including Collateral and the proceeds thereof) are received by a Subordinated Creditor as a result of any Enforcement Action, Exercise of Secured Creditor Remedies or other enforcement taken by any Subordinated Creditor in violation of this Agreement, or any Subordinated Creditor otherwise receives any Distributions, payment or other proceeds (including Collateral and the proceeds thereof) (whether as a result of an Enforcement Action, Exercise of Secured Creditor Remedies or otherwise), and, in each case, at the time of receipt thereof such Distribution, payment, Collateral or other proceeds is not permitted to be made by an Obligor or accepted by the Subordinated Creditor under this Agreement, such Distribution, payment, Collateral or other proceeds shall be held in trust by Subordinated Creditor for the benefit of the Senior Creditors and shall be promptly paid over to the Senior Agent in precisely the form received (except for the endorsement or assignment by any Subordinated Creditor where necessary) (to be applied by the Senior Agent to the Senior Debt in accordance with the terms of the Senior Debt Documents as if the Distributions, Collateral, payment or other proceeds were a payment thereunder until all Senior Debt is Paid in Full). In the event of the failure of the Subordinated Creditor to make any such endorsement or assignment to the Senior Agent, the Senior Agent and any of its officers or agents are hereby irrevocably authorized to make such endorsement or assignment and Subordinated Creditor hereby irrevocably appoints the Senior Agent as its lawful attorney in fact for the purpose of enabling the Senior Agent to make such endorsement or assignment in the name of any Subordinated Creditor.

2.06 Subordination of Liens; Agreement Not to Contest; Sale of Collateral; Releases.

(a) Until all of the Senior Debt has been Paid in Full, any Liens of any Subordinated Creditor in the Collateral or any other assets of any Obligor which may exist shall be and hereby are subordinated for all purposes and in all respects to the Liens of the Senior Agent and each other Senior Creditor in the Collateral and in such other assets, regardless of the time, manner or order of perfection of any such Liens and regardless of the validity, perfection or enforceability of such Liens of the Senior Agent and any Senior Creditor. Subordinated Creditor hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Subordinated Debt Documents or otherwise shall be deemed to restrict in any way the rights and remedies of the Senior Agent or the Senior Creditors with respect to the Collateral. Subordinated Creditor waives its right to, and agrees that it will not, at any time contest or challenge (or assist or support any other Person in contesting or challenging) directly or indirectly, whether or not in any Insolvency Proceeding, the validity, perfection, priority or enforceability of any of the Senior Debt, any of the Senior Debt Documents, or any of the Liens asserted by the Senior Agent or any Senior Creditor in any of the Collateral securing any of the Senior Debt or the validity, priority, enforceability or allowance of any of the claims of the Senior Agent or any Senior Creditor or any holder of Senior Debt against any Obligor or the validity or enforceability of this Agreement or any of the provisions hereof.

(b) Subordinated Creditor agrees that it will not take any action that would interfere with any Exercise of Secured Creditor Remedies or other enforcement action undertaken by the Senior Agent or any Senior Creditor under the Senior Debt Documents, including any public or private sale, lease, exchange, transfer, or other disposition of any Collateral, whether by foreclosure or otherwise. Subordinated Creditor hereby waives any and all rights it may have to contest, protest, object to, interfere with the manner in which the Senior Agent or Senior Creditors seek to enforce the Liens in any Collateral (it being understood and agreed that the terms of this Agreement shall govern with respect to the Collateral even if any portion of the Liens securing all or any portion of the Senior Debt are avoided, disallowed, set aside, or otherwise invalidated in any Insolvency Proceeding, judicial proceeding or otherwise).

(c) Subordinated Creditor acknowledges and agrees that the Senior Agent, for the benefit of itself and the Senior Lenders, has been granted Liens upon all of the Collateral in which the Subordinated Creditor has been granted Liens and Subordinated Creditor hereby consents thereto. Subordinated Creditor agrees that it shall not obtain a Lien on any asset or Collateral to secure all or any portion of the Subordinated Debt unless concurrently therewith, the Senior Agent obtains a Lien on such asset or Collateral and the parties hereby agree that all such Liens are and will be subject to this Agreement. The Senior Agent, for and on behalf of itself and the other Senior Lenders, acknowledge and agree that the Subordinated Creditor has been granted Liens upon all of the Collateral in which the Senior Agent has been granted Liens and the Senior Agent hereby consents thereto subject to the terms and conditions set forth in this Agreement. The subordination of Liens and claims by the Subordinated Creditor in favor of the Senior Agent and the Senior Creditors shall not be deemed to subordinate any Subordinated Creditor's Liens or claims to the Liens or claims of any other Person that is not a holder of Senior Debt or a permitted successor or assignee thereof.

(d) The grants of Liens pursuant to the Senior Debt Documents and the Subordinated Debt Documents constitute two separate and distinct grants. Because of, among other things, their differing rights in the Collateral, the obligations under the Subordinated Debt Documents, to the extent deemed to be “secured claims” within the meaning of Section 506(b) of the Bankruptcy Code, are fundamentally different from the obligations under the Senior Debt Documents and must be separately classified in any plan of reorganization in an Insolvency Proceeding. The Subordinated Creditor will not, directly or indirectly, seek in an Insolvency Proceeding to be treated as part of the same class of creditors as the Senior Creditors and will not, directly or indirectly, oppose or contest any pleading by the Senior Creditor seeking separate classification of their respective secured claims. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of any of the Senior Creditors and the Subordinated Creditor in respect of the Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that all distributions shall be made as if there were separate classes of senior and junior secured claims against the Obligors in respect of the Collateral, with the effect being that, to the extent that the aggregate value of the Collateral is sufficient (for this purpose ignoring all claims held by the Subordinated Creditor), the Senior Creditors shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, expenses and amounts before any distribution is made in respect of the claims held by the Subordinated Creditor, with the Subordinated Creditor hereby acknowledging and agreeing to turn over to the Senior Agent, on behalf of Senior Creditors, amounts otherwise received or receivable by it to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Subordinated Creditor.

(e) In the event of any private or public sale or other disposition of all or any portion of the Collateral in connection with a Release Event at any time prior to the date upon which the Payment in Full of the Senior Debt shall have occurred, Subordinated Creditor agrees that such sale or disposition will be free and clear of the Liens securing the Subordinated Debt and, if the sale or other disposition includes equity interests in any Obligor or any of its Subsidiaries, Subordinated Creditor further agrees that it shall, with such cost and expense incurred in connection therewith being added to the Subordinated Debt, release the Persons whose equity interests are sold or otherwise disposed of from all Subordinated Debt; **provided**, that (a) the Senior Agent also releases its Liens on such Collateral (and, if the sale or other disposition includes equity interests in any Obligor or any of its Subsidiaries, the Senior Agent also releases such Persons whose equity interests are sold or otherwise disposed of from all of their obligations in respect of the Senior Debt) and (b) the net cash proceeds from such disposition are applied pursuant to Section 9. Subordinated Creditor agrees that, in connection with any such sale or other disposition, with such cost and expense incurred in connection therewith being added to the Subordinated Debt, (i) the Senior Agent is authorized to file any and all UCC Lien releases and/or terminations of the Liens or foreign law equivalents held by Subordinated Creditor in connection with such a sale or other disposition, and (ii) it will execute any and all Lien releases and releases of Subordinated Debt (including liabilities as borrower or guarantor or surety) or other documents reasonably requested by the Senior Agent in connection therewith and Subordinated Creditor hereby irrevocably appoints the Senior Agent as its lawful attorneys in fact to execute any and all such Lien releases, Subordinated Debt releases and other documents.

(f) Upon any disposition in connection with clauses (a) and (b) of the definition of a Release Event or after the institution of any Insolvency Proceeding (a “**Distressed Disposal**”), (I) the Senior Agent is irrevocably authorized (x) if the asset which is disposed of consists of all or substantially all of the shares in the capital of a Credit Party, to release (A) that Credit Party and, if all or substantially all of the shares in the capital of any of its Subsidiaries is disposed of, such Subsidiary, from all or any part of the Other Obligations and (B) any other claims of another Credit Party or a non-Credit Party affiliate over that Credit Party’s assets and/or over the assets of that Subsidiary, on behalf of the relevant Senior Creditors, Subordinated Creditor and Credit Parties, (y) if the asset which is disposed of consists of all or substantially all of the shares in the capital of any Credit Party and the Senior Agent decides to dispose of all or any part of the obligations owed by that Credit Party or, if all or substantially all of the shares in the capital of any of its Subsidiaries is disposed of, such Subsidiary, to execute and deliver or enter into any agreement to dispose of all or part of such obligations on behalf of, in each case, the relevant Senior Creditors, the Subordinated Creditor and the Credit Parties, or (z) if the asset which is disposed of consists of all or substantially all of the shares in the capital of a Credit Party (the “**Disposed Credit Party**”) and the Senior Agent decides to transfer to another Credit Party (the “**Receiving Credit Party**”) all or any part of the Disposed Credit Party’s obligations or, if all or substantially all of the shares in the capital of any of its Subsidiaries is disposed of, any obligation of such Subsidiary of the Disposed Credit Party in respect of the obligations of the Credit Parties, to execute and deliver or enter into any agreement to: (1) agree to the transfer of all or part of the obligations in respect of such obligations on behalf of the relevant Credit Parties to which those obligations are owed and on behalf of the Credit Parties which owe those obligations and (2) to accept the transfer of all or part of the obligations in respect of such obligations on behalf of the Receiving Credit Party or Receiving Credit Parties to which the obligations in respect of those obligations to be transferred; and (II) in connection with the dispositions and releases contemplated by clause (I), the Credit Parties shall release the Persons whose equity interests are sold or otherwise disposed of from all Guarantee Liabilities. The Subordinated Creditor and Credit Parties hereby appoint the Senior Agent and any officer or duly authorized person of the Senior Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power of attorney in the place and stead of the Subordinated Creditor and Credit Parties, as applicable, and in the name of the Subordinated Creditor or Credit Parties, as applicable, or in the Senior Agent’s own name, from time to time, in the Senior Agent’s sole discretion, for the purposes of carrying out the terms of this Section 2.06(f), to take any and all appropriate action and to execute and deliver any and all documents and instruments as may be necessary or desirable to accomplish the purposes of this Section 2.06(f), including any financing statements, endorsements, assignments, releases or other documents or instruments of transfer (which appointment, being coupled with an interest, is irrevocable).

2.07 Sale, Transfer or other Disposition of Subordinated Debt.

(a) The Subordinated Creditor shall not assign or otherwise transfer their interests in the Subordinated Debt unless, prior to consummation of any such action, the transferee thereof shall execute and deliver to Senior Agent an agreement binding such transferee to the terms of this Agreement. Notwithstanding the failure of any such assignee or transferee to execute or deliver such a joinder, such assignee or transferee shall be bound by this Agreement as a “Subordinated Creditor”.

(b) The subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Debt, and the terms of this Agreement shall be binding upon the successors and assigns of Subordinated Creditor, as provided in Section 13 hereof.

2.08 Legends. Until the termination of this Agreement in accordance with Section 19 hereof, the Subordinated Creditor will cause to be clearly, conspicuously and prominently inserted on the face of each Subordinated Debt Document, as well as any renewals or replacements thereof, a legend in substantially the following form:

This agreement and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Subordination and Intercreditor Agreement (the “**Intercreditor Agreement**”) dated as of April 27, 2023 by and among HT INVESTMENTS MA LLC (the “**Senior Agent**”), the Subordinated Creditor and Akerna Corp. (the “**Borrower**”, and together with the other credit parties party thereto from time to time, each individually a “**Credit Party**” and collectively, the “**Credit Parties**”), to the indebtedness (including interest) owed by the Credit Parties pursuant to, and/or in connection with, those certain Senior Debt Documents among the Borrower, the other Credit Parties thereto, the Senior Agent and the lenders from time to time party thereto, as such Senior Debt Documents have been and hereafter may be amended, restated, extended, restructured, refinanced, supplemented or otherwise modified from time to time in accordance with the terms of the Intercreditor Agreement and to indebtedness refinancing the indebtedness under each of those agreements from time to time as permitted by the Intercreditor Agreement; and each holder of this agreement, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this document, the terms of the Intercreditor Agreement shall govern and control.

2.09 Obligations Hereunder Not Affected. All rights and interest of the Senior Creditors hereunder, and all agreements and obligations of the Subordinated Creditor and the Obligor hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any document evidencing any of the Senior Debt;

(b) any change in the time, manner or place of payment of, or any other term of, all or any of the Senior Debt, or any other amendment, restatement or waiver of or any release or consent to departure from any of the Senior Debt Documents;

(c) any exchange, release or non-perfection of any Collateral for all or any of the Senior Debt;

(d) any failure of any Senior Creditor to assert any claim or to enforce any right or remedy against any other party hereto under the provisions of this Agreement or any Senior Debt Document other than this Agreement;

(e) any reduction, limitation, impairment or termination of the Senior Debt for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and the Obligors and the Subordinated Creditor hereby waive any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of invalidity, illegality, inauthenticity, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Senior Debt, other than the Payment in Full of the Senior Debt; and

(f) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Obligors in respect of the Senior Debt or any Subordinated Creditor in respect of this Agreement.

Subordinated Creditor acknowledges and agrees that each Senior Creditor may in accordance with the terms of the Senior Debt Documents, without notice or demand and without affecting or impairing any Subordinated Creditor's obligations hereunder: (i) modify or restate the Senior Debt Documents; (ii) take or hold security for the payment of the Senior Debt and exchange, enforce, foreclose upon, waive and release any such security; (iii) apply such security and direct the order or manner of sale thereof as the Senior Creditors in their sole discretion, may determine; (iv) release and substitute one or more endorsers, warrantors, borrowers or other obligors; and (v) exercise or refrain from exercising any rights against any Obligor or any other Person. All of the Senior Debt shall continue to be treated as Senior Debt and the provisions of this Agreement shall continue to govern the relative rights and priorities of the Senior Creditors and the Subordinated Creditor even if all or part of the Senior Debt or the Liens securing the Senior Debt are subordinated, set aside, voided, avoided, unperfected, invalidated or disallowed.

3. Modifications.

3.01 **Modifications to Senior Debt Documents.** Without limiting any of the foregoing, the Senior Creditors, may at any time and from time to time without the consent of or notice to any Subordinated Creditor, without incurring liability to any Subordinated Creditor and without impairing or releasing the obligations of any Subordinated Creditor under this Agreement, change the manner or place of payment, extend the time of payment of or renew or alter any of the terms of the Senior Debt, or amend or restate in any manner any agreement, note, guaranty or other instrument evidencing or securing or otherwise relating to the Senior Debt.

3.02 **Modifications to Subordinated Debt Documents.**

(a) Until all of the Senior Debt has been Paid in Full, and notwithstanding anything to the contrary contained in the Subordinated Debt Documents, the Subordinated Creditor may not without the prior written consent of the Senior Agent and Senior Creditors, change the manner or place of payment or extend the time of payment of or renew or alter any of the terms of the Subordinated Debt Documents, or amend, restate, refinance, extend, restructure, replace, supplement or otherwise modify in any manner any agreement, note, guaranty or other instrument evidencing or otherwise relating to the Subordinated Debt, provided however, that any amount owed under the Subordinated Debt Documents may be exchanged for Stock at any time without such consent.

4. [Reserved.]

5. Bailee for Perfection.

(a) The Senior Agent and the Subordinated Creditor each agree to hold or control that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees), to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC, other applicable law or foreign law equivalent (such Collateral being referred to as the “**Pledged Collateral**”), as bailee and as a non-fiduciary agent for the Subordinated Creditor or the Senior Agent, as applicable (such bailment and agency being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2), 9- 313(c), 9-104, 9-105, 9-106, and 9-107 of the UCC or any foreign law equivalent), solely for the purpose of perfecting the security interest granted on the Collateral under the Subordinated Debt Documents or the Senior Debt Documents, as applicable, subject to the terms and conditions of this Section 5. Unless and until the Senior Debt has been Paid in Full, Subordinated Creditor agrees to promptly notify the Senior Agent of any Pledged Collateral held by it or by Subordinated Creditor, and, promptly upon the request of the Senior Agent, Subordinated Creditor agrees to deliver to the Senior Agent any such Pledged Collateral held by it, together with any necessary endorsements (or otherwise allow the Senior Agent to obtain control of such Pledged Collateral), with such cost and expense incurred in connection therewith shall be added to the Subordinated Debt.

(b) The Senior Agent shall have no obligation whatsoever to Subordinated Creditor to ensure that the Pledged Collateral is genuine or owned by any Obligor or to preserve rights or benefits of any Person except as expressly set forth in this Section 5. The duties or responsibilities of the Senior Agent under this Section 5 shall be limited solely to holding or controlling the Pledged Collateral as bailee and agent in accordance with this Section 5 and delivering the Pledged Collateral upon the Payment in Full of the Senior Debt as provided in clause (d) of this Section 5.

(c) The Senior Agent acting pursuant to this Section 5 shall not have by reason of the Senior Debt Documents, the Subordinated Debt Documents, or this Agreement a fiduciary relationship in respect of any Subordinated Creditor. The Subordinated Creditor acting pursuant to this Section 5 shall not have by reason of the Senior Debt Documents, the Subordinated Debt Documents, or this Agreement a fiduciary relationship in respect of the Senior Agent or any Senior Creditor.

(d) Upon the Payment in Full of the Senior Debt, the Senior Agent shall deliver the remaining Pledged Collateral (if any) together with any necessary endorsements, first, to the Subordinated Creditor to the extent the Subordinated Debt remains outstanding as confirmed in writing by the Subordinated Creditor, and, to the extent that the Subordinated Creditor confirms no Subordinated Debt is outstanding, second, to the Obligors to the extent no Senior Debt and no Subordinated Debt remains outstanding (in each case, so as to allow such Person to obtain possession or control of such Pledged Collateral).

(e) Upon the Payment in Full of the Senior Debt, the Senior Agent shall deliver change notices (or similar documents) necessary to transfer control of deposit accounts from the Senior Agent, first, to the Subordinated Creditor to the extent the Subordinated Debt remains outstanding as confirmed in writing by the Subordinated Creditor, and, to the extent that the Subordinated Creditor confirm no Subordinated Debt is outstanding, second, to the Obligors to the extent no Senior Debt or the Subordinated Debt remains outstanding (in each case, so as to allow such Person to obtain control of such deposit accounts). Except as expressly set forth in the foregoing sentence and notwithstanding anything to the contrary contained in this Section 5, the Senior Agent shall have no obligation to (i) assign any deposit account control agreement with a third party to the Subordinated Creditor to the extent that the terms of such deposit account control agreement prohibit any such assignment or otherwise require the consent of such third party that is not granted or (ii) take any action to assist the Subordinated Creditor with respect to the replacement of any such deposit account control agreement that cannot be so assigned.

6. Representations and Warranties.

6.01 Representations and Warranties of Subordinated Creditor. The Subordinated Creditor hereby represents and warrants to the Senior Agent and the Senior Creditors that as of the date hereof: (a) Subordinated Creditor is an entity duly formed and validly existing under the laws of its state of incorporation; (b) Subordinated Creditor has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action; (c) the execution of this Agreement by the Subordinated Creditor will not violate or conflict with the organizational documents of the Subordinated Creditor, any material agreement binding upon the Subordinated Creditor or any material law, regulation or order or require any consent or approval which has not been obtained; and (d) this Agreement is the legal, valid and binding obligation of the Subordinated Creditor, enforceable against the Subordinated Creditor in accordance with its terms.

6.02 Representations and Warranties of Senior Agent. Senior Agent hereby represents and warrants to the Subordinated Creditor that as of the date hereof: (a) Senior Agent is an entity duly formed and validly existing under the laws of its state of incorporation; (b) it has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement (including without limitation binding the other Senior Creditors for which it is an agent to the terms and conditions of this Agreement), all of which have been duly authorized by all proper and necessary action; and (c) the execution of this Agreement by Senior Agent will not violate or conflict with the organizational documents of Senior Agent, any material agreement binding upon Senior Agent or any material law, regulation or order or require any consent or approval which has not been obtained.

7. Subrogation; Recovery.

(a) After the date of Payment in Full of the Senior Debt, but at no time prior to such date, in the event and to the extent cash, property or securities otherwise payable or deliverable to the holders of the Subordinated Debt shall have been applied pursuant to this Agreement to the payment of Senior Debt, then and in each such event, the holders of the Subordinated Debt shall, in addition to any other rights or remedies Subordinated Creditor may have under common law or otherwise against the Obligors, be subrogated to the rights of each holder of Senior Debt to receive any further payment or Distribution in respect of or applicable to the Senior Debt, and, for the purposes of such subrogation, no payment or Distribution to the holders of Senior Debt of any cash, property or securities to which any holder of Subordinated Debt would be entitled except for the provisions of this Agreement shall, and no payment over pursuant to the provisions of this Agreement to the holders of Senior Debt by the holders of the Subordinated Debt shall, as between any Obligor, its creditors other than the Senior Creditors and the Subordinated Creditor, be deemed to be a payment by such Obligor to or on account of Senior Debt. A Distribution made pursuant to this Agreement to the Senior Agent or the Senior Creditors that otherwise would have been made to a Subordinated Creditor is not, as between the Obligors and Subordinated Creditor, a payment by the Obligors to or on account of the Senior Debt for purposes of determining whether a right of subrogation exists hereunder. Senior Agent and the other Senior Creditors shall have no obligation or duty to protect the Subordinated Creditor's rights or subrogation arising pursuant to this Agreement or under any applicable law or otherwise, nor shall Senior Agent or any other Senior Creditor be liable for any loss to, or impairment of, any subrogation rights held by the Subordinated Creditor. No priority or right of the Senior Agent, the Senior Creditors or any other holder of Senior Debt shall at any time be prejudiced or impaired in any way by any act or failure to act on the part of any Obligor or any other Person or by the noncompliance by any Person with the terms, provisions, or covenants of the Senior Debt Documents or the Subordinated Debt Documents, regardless of any knowledge thereof which the Senior Agent, the Senior Creditors or any holder of Senior Debt may have.

(b) If any Senior Creditor determines that it is required to disgorge any proceeds of Collateral, payment or other amount received by such Person (whether because such proceeds, payment or other amount is invalidated, declared to be fraudulent or preferential or otherwise) or turn over or otherwise pay any amount (a “**Recovery**”) to the estate or to any creditor or representative of an Obligor or any other Person, then the applicable Senior Debt shall be reinstated (to the extent of such Recovery) as if such Senior Debt had never been paid and to the extent any Subordinated Creditor has received proceeds, payments or other amounts to which Subordinated Creditor would not have been entitled under this Agreement had such reinstatement occurred prior to receipt of such proceeds, payments or other amounts, upon written demand (specifying the funds that were wrongfully paid to Subordinated Creditor, in reasonable detail) Subordinated Creditor shall turn over such proceeds, payments or other amounts to the Senior Agent (to be held and/or applied by the Senior Agent to the Senior Debt in accordance with the terms of the Senior Debt Documents as if the Distributions were a payment thereunder until all Senior Debt is Paid in Full).

8. **Notice of Acceptance and Other Waivers.**

(a) To the fullest extent permitted by applicable law, Subordinated Creditor hereby waives: (i) notice of acceptance hereof; (ii) notice of any loans or other financial accommodations made or extended under the Senior Debt Documents, or the creation or existence of any Senior Debt; (iii) notice of the amount of the Senior Debt; (iv) notice of any adverse change in the financial condition of any Obligor or of any other fact that might increase any Subordinated Creditor’s risk hereunder; (v) notice of presentment for payment, demand, protest, and notice thereof as to any instrument among the Senior Debt Documents; (vi) notice of any Default or Event of Default under the Senior Debt Documents or otherwise relating to the Senior Debt; and (vii) all other notices (except if such notice is specifically required to be given to the Subordinated Creditor under this Agreement) and demands to which any Subordinated Creditor might otherwise be entitled.

(b) To the fullest extent permitted by applicable law, Subordinated Creditor waives the right by statute or otherwise to require the Senior Agent, any Senior Creditor or any holder of Senior Debt to institute suit against any Obligor or to exhaust any rights and remedies which the Senior Agent, any Senior Creditor or any holder of Senior Debt has or may have against any Obligor. Subordinated Creditor further waives any defense arising by reason of any disability or other defense (other than the defense that the Payment in Full of the Senior Debt has occurred (subject to the provisions of Section 7) of any Obligor or by reason of the cessation from any cause whatsoever of the liability of such Obligor in respect thereof.

(c) To the fullest extent permitted by applicable law, Subordinated Creditor hereby waives: (i) any rights to assert against the Senior Agent, the Senior Creditors or any other holder of Senior Debt any defense (legal or equitable), set-off, counterclaim, or claim which any Subordinated Creditor may now or at any time hereafter have against any Obligor or any other party liable to the Senior Agent, the Senior Creditors, any other holder of Senior Debt; (ii) any defense, set-off, counterclaim, or claim, of any kind or nature, arising directly or indirectly from the present or future lack of perfection, sufficiency, validity, or enforceability of any Senior Debt, any Subordinated Debt or any security for either; (iii) any defense arising by reason of any claim or defense based upon an election of remedies by the Senior Agent, the Senior Creditors or any other holder of Senior Debt; and (iv) the benefit of any statute of limitations affecting any Subordinated Creditor's obligations hereunder or the enforcement thereof, and any act which shall defer or delay the operation of any statute of limitations applicable to the Senior Debt shall similarly operate to defer or delay the operation of such statute of limitations applicable to any Subordinated Creditor's obligations hereunder.

(d) Until such time as the Payment in Full of the Senior Debt shall have occurred, (i) Subordinated Creditor hereby waives and postpones any right of subrogation it has or may have as against any Obligor with respect to any Senior Debt; and (ii) in addition, Subordinated Creditor hereby waives and postpones any right to proceed against any Obligor or any other Person, now or hereafter, for contribution, indemnity, reimbursement, or any other suretyship rights and claims (irrespective of whether direct or indirect, liquidated or contingent), with respect to any Senior Debt.

(e) Without limiting the generality of any other waiver or other provision set forth in this Agreement, Subordinated Creditor, to the fullest extent permitted by law, hereby waives all rights and defenses arising out of an election of remedies by the Senior Agent, the Senior Creditors or any other holder of Senior Debt, even though that election of remedies has destroyed any Subordinated Creditor's rights of subrogation and reimbursement against any obligor by the operation of any applicable law.

(f) None of the Senior Agent, any Senior Creditor or any other holder of Senior Debt or any of their respective affiliates, directors, officers, employees, advisors, or agents shall be liable for failure to demand, collect, or realize upon any of the Collateral or any Proceeds or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof. If the Senior Agent or any Senior Creditor honors (or fails to honor) a request by the Obligors for an extension of credit pursuant to the Senior Credit Agreements or any of the other Senior Debt Documents, whether the Senior Agent or any Senior Creditor has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of the Subordinated Debt Documents or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the Senior Agent or any Senior Creditor otherwise should exercise any of its contractual rights or remedies under the Senior Debt Documents (subject to the express terms and conditions hereof), neither the Senior Agent nor any Senior Creditor shall have any liability whatsoever to any Subordinated Creditor as a result of such action, omission, or exercise. The Senior Agent and the Senior Creditors will be entitled to manage and supervise their loans and extensions of credit under the Senior Debt Documents as the Senior Agent and the Senior Creditors may, in their sole discretion, deem appropriate, and the Senior Agent, each Senior Creditor and each other holder of Senior Debt may manage their loans and extensions of credit without regard to any rights or interests that any Subordinated Creditor may have in the Collateral or otherwise. Subordinated Creditor agrees that none of the Senior Agent, any Senior Creditor or any other holder of Senior Debt shall incur any liability as a result of a sale, lease, license, application or other disposition of all or any portion of the Collateral or any part or Proceeds thereof conducted in accordance with applicable law and the terms of this Agreement. The Senior Agent, each Senior Creditor and each holder of Senior Debt may from time to time, enter into agreements and settlements with Obligors as they may determine in their sole discretion without impairing any of the subordinations, priorities, rights or obligations of the parties under this Agreement, including substituting Collateral, releasing any Lien and releasing any Obligor. Subordinated Creditor waives any and all rights it may have to require the Senior Agent, any Senior Creditor or any holder of Senior Debt to marshal assets, to exercise rights or remedies in a particular manner or order, or to forbear from exercising such rights and remedies in any particular manner or order.

9. **Application of Proceeds.** All Collateral and all Proceeds received by any of the Senior Agent, the Senior Creditors or the Subordinated Creditor in connection with any Exercise of Secured Creditor Remedies or as a result of insurance or condemnation events, in each case, in an Insolvency Proceeding or otherwise (but subject to the provisions of Section 2.02(a)), shall be applied:

(a) first, to the payment of the out-of-pocket costs and expenses of the Senior Agent and Senior Creditors in connection with such Exercise of Secured Creditor Remedies,

(b) second, to the payment of the Senior Debt in accordance with the Senior Debt Documents until the Payment in Full of the Senior Debt shall have occurred,

(c) third, to the payment of the fees, costs and expenses of the Subordinated Creditor in accordance with the Subordinated Debt Documents, and

(d) fourth, the balance, if any, to the Obligors or to whosoever may be lawfully entitled to receive the same or as court of competent jurisdiction may direct.

10. **Modification.** Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by the Senior Agent the Subordinated Creditor, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

11. **Further Assurances.** At the sole costs of the Obligors, each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

12. **Notices.** Unless otherwise specifically provided herein, any notice delivered under this Agreement shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied, e-mailed or sent by Federal Express or other reputable overnight courier service or mail (certified mail, postage prepaid and return receipt requested) and shall be deemed to have been given (a) if delivered in person, when delivered; (b) if delivered by telecopy or by e-mail, when transmitted; (c) if delivered by Federal Express or other reputable overnight courier, upon delivery; or (d) if by United States mail, the earlier of receipt and three (3) Business Days after deposit in the mail, postage prepaid and return receipt requested.

Notices shall be addressed as follows:

If to the Senior Agent or any other Senior Creditor:

HT INVESTMENTS MA LLC
1550 Larimer Street, #246
Denver, CO 80202

Attention:
E-Mail:

If to Subordinated Creditor:

MJ Acquisition Corp.
21550 Biscayne Blvd, Suite 400
Aventura, FL 33180

Attention:
E-Mail:

If to any Obligor:

Akerna Corp.
1550 Larimer Street, #246
Denver CO, 80202

Attention:
E-Mail:

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this [Section 12](#).

13. **Successors and Assigns; Permitted Refinancing.** This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Senior Agent, the Senior Creditors, the Subordinated Creditor and the Obligors. The Senior Creditors may, from time to time, without notice to any Subordinated Creditor, assign or transfer any or all of the Senior Debt or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Debt shall be and remain Senior Debt for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Debt or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Debt, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto, in each case so long as such assignee or transferee is made subject to all the terms and the conditions set forth in this Agreement. Any assignment by the Subordinated Creditor of any Subordinated Debt shall be subject to [Section 2.07](#). Subordinated Creditor agrees that any party that consummates a Permitted Senior Debt Refinancing may rely on and enforce this Agreement so long as such party is made subject to all the terms and the conditions set forth in this Agreement. Subordinated Creditor further agrees that it will, at the request of the Senior Agent and at the sole cost and expense of the Obligors, enter into an agreement in form and substance of this Agreement, with the party that consummates the Permitted Senior Debt Refinancing; **provided**, that the failure of any Subordinated Creditor to execute such an agreement shall not affect such party's right to rely on and enforce (and shall be subject to) the terms of this Agreement. The obligations of the Senior Creditors hereunder are several, not joint, and no Senior Agent or Senior Creditor shall be liable, directly or indirectly, for any act, omission or representation of any other Senior Creditor.

14. **Relative Rights.** This Agreement shall define the relative rights of the Senior Agent, the Senior Creditors and the Subordinated Creditor. Nothing in this Agreement shall (a) impair, as among the Obligors, the Senior Agent and the Senior Creditors and as among the Obligors and the Subordinated Creditor, the obligation of the Obligors with respect to the payment of the Senior Debt and the Subordinated Debt in accordance with their respective terms or (b) affect the relative rights of the Senior Agent, the Senior Creditors or the Subordinated Creditor with respect to any other creditors of any Obligor. The provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Creditors and the Subordinated Creditor and their respective successors and assigns, and this Agreement shall not be deemed to create any rights or priorities in favor of any other Person, including, without limitation, any Obligor, and there are no other parties or Persons whatsoever including, without limitation, the Obligors, who are intended to be benefited in any manner whatsoever by this Agreement.

15. **Conflict.** In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Subordinated Debt Documents or Senior Debt Documents, as applicable, the provisions of this Agreement shall control and govern.

16. **Headings.** The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

17. **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or email shall be as effective as delivery of a manually executed counterpart hereof. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

18. **Severability.** In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

19. **Continuation of Subordination; Termination of Agreement.** This Agreement shall remain in full force and effect until the Payment in Full of all of the Senior Debt after which this Agreement shall terminate without further action on the part of the parties hereto; **provided**, that if any payment is, subsequent to such termination, recovered from any holder of Senior Debt, this Agreement shall be reinstated; **provided, further** that a Permitted Senior Debt Refinancing shall not be deemed to be Payment in Full of any of the Senior Debt.

20. **GOVERNING LAW.** THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, INCLUDING ITS VALIDITY, INTERPRETATION, CONSTRUCTION, PERFORMANCE AND ENFORCEMENT (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST- JUDGMENT INTEREST).

21. **SUBMISSION TO JURISDICTION.** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA SITTING IN THE SOUTHERN DISTRICT OF NEW YORK AND, BY THEIR EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO HEREBY ACCEPTS FOR ITSELF, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM NON CONVENIENS*, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH JURISDICTIONS.

22. **WAIVER OF JURY TRIAL.** THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT AND ANY TRANSACTION CONTEMPLATED HEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON (AS DEFINED IN THE SENIOR CREDIT AGREEMENTS) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY 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 AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

23. **Additional Obligor/Subordinated Creditor.** The Borrower shall cause any Person that becomes a Credit Party to execute a joinder (in form and substance reasonably satisfactory to the Senior Agent) to this Agreement to bind such Person to this Agreement as an Obligor. Concurrently with a Person being issued any Subordinated Notes Documents, the Borrower shall cause such Person to execute a counterpart signature page to this Agreement, which signature page shall be appended to this Agreement thereby binding such Person to this Agreement as a Subordinated Creditor.

[Balance of page intentionally left blank; signature pages follow.]

IN WITNESS WHEREOF, the Senior Agent, Subordinated Creditor and the Credit Parties have caused this Agreement to be executed as of the date first above written.

SENIOR AGENT:

HT INVESTMENTS MA LLC, as Senior Agent

By: /s/ Eric Helenek

Name: Eric Helenek

Title: Authorized Signatory

[Signature Page to Subordination and Intercreditor Agreement]

SUBORDINATED CREDITOR:

MJ ACQUISITION CORP., as Subordinated Creditor

By: /s/ Scott Ogur

Name: Scott Ogur

Title: Authorized Representative

[Signature Page to Subordination and Intercreditor Agreement]

CREDIT PARTIES:

AKERNA CORP., as a Credit Party

By: /s/ Jessica Billingsley

Name: Jessica Billingsley

Title: Chief Executive Officer

AKERNA SERVICES, LLC, as a Credit Party

By: /s/ Jessica Billingsley

Name: Jessica Billingsley

Title: Chief Executive Officer

MJ FREEWAY, LLC, as a Credit Party

By: /s/ Jessica Billingsley

Name: Jessica Billingsley

Title: Chief Executive Officer

[Signature Page to Subordination and Intercreditor Agreement]

WAIVER

This Waiver (this “**Waiver**”) is entered into as of October 11, 2023, by and between Akerna Corp., a Delaware corporation (the “**Company**”), and the undersigned holder (the “**Holder**”), which constitutes the “**Required Holders**” pursuant to that certain Securities Purchase Agreement between the Company and all of the investors listed on the Schedule of Buyers (the “**Buyers**”) dated October 5, 2021 (the “**SPA**”) with reference to the following facts:

A. On October 5, 2021, the Company and the Buyers entered into the SPA in relation to the issuance and sale by the Company and purchase by the Holders of that aggregate principal amount of senior secured convertible notes of the Company, in substantially the form attached to the SPA as Exhibit A (as amended or waived from time to time prior to the date hereof, the “**2021 Notes**”), set forth opposite such Buyer’s name on the Schedule of Buyers (which aggregate principal amount of Notes for all Buyers was \$20,000,000). Capitalized terms not defined herein shall have the meaning as set forth in the Notes.

B. The issuance of the Notes occurred at a closing on October 5, 2021 (the “**Closing Date**”).

C. The Company desires to enter into a subordinated, amended and restated convertible secured promissory note dated the date hereof, in the form attached hereto a **Exhibit A** (the “**Amended and Restated Secured Promissory Note**”), with MJ Acquisition Corp. (“**MJA**”) in relation to a \$1,500,000 loan from MJA regarding MJA’s amendment number one dated the date hereof to the security purchase agreement dated April 27, 2023 with the Company to acquire certain subsidiaries of the Company.

D. In connection with the Amended and Restated Secured Promissory Note, the Company desires to enter into an Amended and Restated Security and Pledge Agreement in the form attached hereto a **Exhibit B** (“**New Note Amended and Restated Security Agreement**”), Amended and Restated Intellectual Property Security Agreement in the form attached hereto a **Exhibit C** (the “**New Note Amended and Restated IP Security Agreement**”) and an Amended and Restated Guaranty in the form attached hereto as **Exhibit D** (the “**New Note Amended and Restated Guaranty**”, together with the Amended and Restated Secured Promissory Note, the New Note Amended and Stated Security Agreement and the New Note Amended and Restated IP Security Agreement, the “**New Note Amended and Restated Transaction Documents**”), each dated as of the date hereof, to secure the payment of the Amended and Restated Secured Promissory Note.

E. In connection with the issuance of the Amended and Restated Secured Promissory Note, the Company desires to enter into an amended and restated subordination agreement in the form attached hereto a **Exhibit E** (the “**Amended and Restated Subordination Agreement**”) dated the date hereof by and among MJA and HT Investments MA LLC, as collateral agent for the Holders of the 2021 Notes (the “**Collateral Agent**”), regarding the subordination of the payment of the Amended and Restated Secured Promissory Note and the security interests granted to MJA in the New Note Amended and Restated Transaction Documents to the senior interests of Holders of the 2021 Notes and the security interests granted to the Collateral Agent under the Transaction Documents for the 2021 Notes.

F. In connection with the issuance of the Amended and Restated Secured Promissory Note and entering into the New Note Amended and Restated Transaction Documents, the Company desires that the Holder waive the prohibition on issuing indebtedness other than Permitted Indebtedness pursuant to Section 14(b) of the 2021 Notes (the “**Indebtedness Restriction**”) and the prohibition permitting Liens to exist other than Permitted Liens pursuant to Section 14(c) of the 2021 Notes and Section 5(g)(v) of the 2021 Note Security Agreement (the “**Lien Restrictions**”, together with the Indebtedness Restriction, the “**Restrictions**”).

G. The Holder desires to waive the Restrictions solely to permit the Company to issue the Secured Promissory Note and execute and perform its obligations under the New Note Transaction Documents and the Subordination Agreement.

NOW, THEREFORE, in consideration of the premises set forth above, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Waiver. Effective as of the Effective Time, the Holder hereby waives the Restrictions solely in relation to the Company issuing the Amended and Restated Secured Promissory Note and executing and performing its obligations under the New Note Amended and Restated Transaction Documents and the Amended and Restated Subordination Agreement.

2. Acknowledgments. The Company hereby confirms and agrees that (i) except with respect to the waivers set forth in Sections 1 above that are effective as of the Effective Time, the 2021 Notes and the other Transaction Documents related thereto shall continue to be, in full force and effect; (ii) the execution, delivery and effectiveness of this Waiver shall not operate as an amendment, modification or waiver of any right, power or remedy of the Holder or any other Buyers except to the extent expressly set forth herein.

3. Fees And Expenses. The Company shall reimburse the Holder a nonaccountable amount of \$2,500 for the legal fees and expenses of Kelley Drye & Warren LLP, counsel to the Holder, in connection with the preparation and negotiation of this Waiver and transactions contemplated thereby, by paying any such amount by wire transfer of immediately available funds in accordance with the written instructions delivered to the Company (the “**Legal Fee Amount**”). The Legal Fee Amount shall be paid by the Company whether or not the transactions contemplated by this Waiver are consummated within 24 hours of the Effective Time.

4. Effective Time. This Waiver shall be effective on October 11, 2023 (the “**Effective Time**”).

5. No Material Information. On or before 8:30 a.m., New York City time, on the first Business Day after the Effective Time, the Company shall file a Current Report on Form 8-K describing the terms of the transactions contemplated by this Waiver and any other material non-public information the Company may have provided to the Holder in relation thereto or otherwise in the form required by the 1934 Act and attaching this Waiver as exhibits to such filing (the “**8-K Filing**”). From and after the filing of the 8-K Filing with the SEC, the Holder shall not be in possession of any material, nonpublic information received from the Company, any of its Subsidiaries or any of their respective officers, directors, employees, affiliates or agents, that is not disclosed in the 8-K Filing. In addition, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents on the one hand, and the Holder or any of its affiliates on the other hand, has terminated as of the date hereof and is of no further force or effect. The Company shall not, and shall cause each of its Subsidiaries and its and each of their respective officers, directors, affiliates, employees and agents, not to, provide any Holder with any material, non-public information regarding the Company or any of its Subsidiaries from and after the date hereof without the express prior written consent of the Holder. To the extent that the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates employees or agents delivers any material, non-public information to any Holder without the Holder’s consent, including delivery of any Installment Notice with a proposed increased Installment Amount, the Company hereby covenants and agrees that the Holder shall not have any duty of confidentiality to the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents with respect to, or a duty to the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents not to trade on the basis of, such material, non-public information. The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in securities of the Company.

6. No Third Party Beneficiaries. This Waiver is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

7. Counterparts. This Waiver may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains a portable document format (.pdf) file of an executed signature page, such signature page shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature page were an original thereof.

8. No Strict Construction. The language used in this Waiver will be deemed to be the language chosen by the parties to express their mutual intent, and no rules of strict construction will be applied against any party.

9. Headings. The headings of this Waiver are for convenience of reference and shall not form part of, or affect the interpretation of, this Waiver.

10. Severability. If any provision of this Waiver is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Waiver so long as this Waiver as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. Amendments. No provision of this Waiver may be amended other than by an instrument in writing signed by the Company and the Required Holders.

12. Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Waiver and the consummation of the transactions contemplated hereby.

13. Notice. Whenever notice is required to be given under this Waiver, unless otherwise provided herein, such notice shall be given in accordance with Section 9(f) of the SPA.

14. Successors and Assigns. This Waiver shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

15. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Waiver shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the 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 at the address for such notices to it under this Waiver and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall 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 WAIVER OR ANY TRANSACTION CONTEMPLATED HEREBY.**

[Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned and the Company have caused their respective signature page to this Waiver to be duly executed as of the date first written above.

COMPANY:

AKERNA CORP.

By: _____
Name: Jessica Billingsley
Title: Chief Executive Officer

[Signature Page to Waiver – October 2023]

IN WITNESS WHEREOF, the undersigned and the Company have caused their respective signature page to this Waiver to be duly executed as of the date first written above.

HOLDER:

HIGH TRAIL INVESTMENTS SA LLC

By: _____
Name:
Title:

[HT Signature Page to Waiver – October 2023]



HOLDER:

**ALTO OPPORTUNITY MASTER FUND, SPC -
SEGREGATED MASTER PORTFOLIO B**

By: _____

Name:

Title:

[Alto Signature Page to Waiver – October 2023]
