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): **January 27, 2023**

AKERNA CORP.
(Exact name of registrant as specified in its charter)

Delaware	**001-39096**	**83-2242651**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1550 Larimer Street, #246, Denver, Colorado	**80202**
(Address of principal executive offices)	(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.

Securities Purchase Agreement

On January 27, 2023, Akerna Corp., a Delaware corporation ("Akerna"), entered into a securities purchase agreement (the "SPA") with Akerna Canada Ample Exchange Inc. ("Akerna Exchange") and POSaBIT Systems Corporation ("POSaBIT"). Upon the terms and subject to the satisfaction of the conditions described in the SPA, including approval of the transaction by Akerna's stockholders, Akerna will sell to POSaBIT (or a subsidiary of POSaBIT) all of the membership interests in MJ Freeway, LLC ("MJF") and Akerna Exchange will sell to POSaBIT all of the outstanding capital stock of Ample Organics Inc. ("Ample") (jointly, such sales, the "Sale Transaction") for a purchase price of $4,000,000 in cash.

The purchase price is subject to adjustment at closing of the Sale Transaction based on the amount by which estimated closing working capital varies from target working captial (as set forth in the SPA), reduction for closing indebtedness, reduction closing transaction expenses and reduction for credit referral payments under certain commercial agreements entered into by and between Akerna and POSaBIT contemporaneously with the signing of the SPA. The purchase price is subject to further adjustment post-closing upon delivery of the post-closing statement by POSaBIT within 75 days after the closing pursuant to the same adjustment provisions subject to a $500,000 cap on any post-closing working capital adjustments.

The SPA contains customary representations, warranties and covenants of Akerna and POSaBIT, including covenants relating to the conduct of the business of MJF and Ample from the date of signing the SPA through closing of the Sale Transaction and obtaining the requisite approval of the stockholders of Akerna. Under the terms of the SPA, Akerna has also agreed not to solicit from any person an acquisition proposal (as defined in the SPA) for either MJW and Ample or for Akerna.

In connection with the Sale Transaction, Akerna has agreed to hold a meeting of its stockholders to approve the SPA and the Sale Transaction under Delaware law (along with certain matters related to the merger transaction as described below). The board of directors of Akerna (the "Board") has agreed to recommend the approval of the SPA and the Sale Transaction to the stockholders and to solicit proxies in support of the approval of the matters at the meeting of the stockholders. The SPA contains a limited contractual ability for the Board, in accordance with its fiduciary duties to the stockholders, to change its recommendation to the stockholders upon receipt of a superior offer subject to certain terms and conditions therein, including providing POSaBIT notice of the superior offer and time to make a counter-proposal to amend the terms of the SPA.

Under the SPA, Akerna and POSaBIT have agreed to provide limited indemnification to each other with respect to certain tax matters, in each case capped at a maximum amount of $500,000.

The closing of the Sale Transaction is subject to customary closing conditions, including, among other things, (i) the required approval of the stockholders of Akerna, (ii) the accuracy of the representations and warranties of the parties made in the SPA, subject to materiality qualifiers, and (iii) compliance by the parties with their respective covenants under the SPA. Further, closing of the Sale Transaction is conditioned on the simultaneous closing of the merger transaction, as described below. The obligation of POSaBIT to close on the Sale Transaction is also subject to satisfaction of certain additional conditions, including, among other things, (i) retention of certain key employees and 80% of other designated employees, (ii) MJF's contracts with the State of Pennsylvania and the State of Utah remaining in effect, (iii) material contracts constituting no more than 50% of MJF and Ample's recurring subscription revenue that is up for renewal between the date of the SPA and the closing shall have terminated, otherwise ceased to be in full force and effect, or been subject to a notice of termination or non-renewal, (iv) the State of Pennsylvania shall not have issued a change order to provide expanded software access to third parties, and (v) as an additional closing condition solely with respect to the sale of Ample, completion of certain limited due diligence on Ample.

The parties may terminate the SPA upon mutual consent. POSaBIT may terminate the SPA for (i) a material breach, inaccuracy in or failure to perform any representations, warranty, covenant or agreement made by Akerna that would give rise to a failure of the closing conditions, (ii) impossibility of closing conditions, (iii) failure to obtain the approval of the Akerna stockholders, (iv) a change in the Board's recommendation of the Sale Transaction to the stockholders or failure to hold the stockholders meeting, (v) the Board changing its recommendation and accepting a superior offer, and (vi) failure to close. Akerna may terminate the SPA for (i) a material breach, inaccuracy in or failure to perform any representations, warranty, covenant or agreement made by POSaBIT that would give rise to a failure of the closing conditions, (ii) impossibility of closing conditions, and (iii) acceptance of a superior offer.

In the event that POSaBIT or Akerna terminates the SPA pursuant to certain of the sections set forth above, Akerna will be required to pay POSaBIT a termination fee of $140,000 and reimburse POSaBIT for its reasonable fees and expenses up to $60,000.

Merger Agreement

Concurrently with the execution of the SPA, on January 27, 2023, Akerna entered into an Agreement and Plan of Merger (the "Merger Agreement") with Gryphon Digital Mining, Inc. ("Gryphon") and Akerna Merger Co. ("Akerna Merger"). Upon the terms and subject to the satisfaction of the conditions described in the Merger Agreement, including approval of the transaction by the stockholders of Akerna and Gryphon, Akerna Merger will be merged with and into Gryphon (the "Merger"), with Gryphon surviving the Merger as a wholly-owned subsidiary of Akerna. The Merger is intended to qualify as a tax-free reorganization for U.S. federal income tax purposes.

Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger (the "Effective Time"): (i) each share of Gryphon capital stock issued and outstanding immediately prior to the Effective Time shall automatically be converted into and become the right to receive the applicable per share portion of the "merger consideration" as set forth in the allocation statement to be delivered pursuant to the Merger Agreement ("merger consideration" is defined in the Merger Agreement to mean a number of shares of common stock of Akerna equal to (a) the quotient obtained by dividing (i) the number of shares of Akerna capital stock on a fully diluted basis (the "Akerna Fully Diluted Share Number") by (ii) 0.075, minus (b) the Akerna Fully Diluted Share Number minus (c) the number of shares of common stock of Akerna the warrants of Gryphon will become exercisable for upon closing of the Merger); (ii) each outstanding warrant of Gryphon will be assumed by Akerna and become a warrant to purchase an adjusted number of shares of common stock of Akerna, at an adjusted exercise price per share but subject to the same terms and conditions as the warrant of Gryphon.

Following closing of the Merger, the former Gryphon equityholders immediately before the Merger are expected to own approximately 92.5% of the outstanding capital stock of Akerna on a fully diluted basis and the equityholders of Akerna immediately before the Merger are expected to own approximately 7.5% of the outstanding capital stock of Akerna on a fully diluted basis.

Upon closing of the Merger, Akerna will be renamed Gryphon Digital Mining, Inc., and will be headquartered in Las Vegas, Nevada. Rob Chang will serve as Chief Executive Officer of the combined company. The Merger Agreement provides that the Board of Directors of the combined company will be comprised of seven members of which a minimum of five will be filled upon completion of the Merger, one designated by Akerna, being Jessica Billingsley, its current Chief Executive Officer, and the remaining six positions to be designated by Gryphon.

The Merger Agreement contains customary representations, warranties and covenants of Akerna and Gryphon, including covenants relating to the conduct of the business of both Akerna and Gryphon from the date of signing the Merger Agreement through closing of the Merger, obtaining the requisite approval of the stockholders of Akerna and Gryphon and maintain the listing of the common stock of Akerna on the NASDAQ Capital Market and applying for the continued listing of Gryphon after the closing of the Merger on the NASDAQ Capital Market. Under the terms of the Merger Agreement, Akerna has also agreed not to solicit from any person an acquisition proposal (as defined in the Merger Agreement) for Akerna.

In connection with the Merger, Akerna will prepare and file with the U.S. Securities and Exchange Commission (the "SEC") a registration statement on Form S-4 that will contain a prospectus and a proxy statement, and will seek the approval of Akerna's stockholders with respect to certain actions, including the following (collectively, the "Akerna Stockholder Proposals"):

(i) the Sale Transaction and the SPA;

(ii) issuance of the shares of common stock of Akerna comprising the merger consideration;

(iii) the change of control of Akerna resulting from the transactions contemplated by this Agreement pursuant to the rules of NASDAQ;

(iv) the post-closing equity plan for Akerna;

(v) the post-closing board composition;

(vi) an amendment to the certificate of incorporation of Akerna to effect a reverse stock split;

(vii) an amendment to the certificate of incorporation of Akerna to increase the number of authorized shares of Akerna; and

(viii) an amendment to the certificate of incorporation of Akerna to change the name of Akerna.

The Board has agreed to recommend the approval of the Akerna Stockholder Proposals to the stockholders and to solicit proxies in support of the approval of the Akerna Stockholder Proposals at a meeting of the stockholders to be held for that purpose.

The Merger Agreement contains a limited contractual ability for the Board, in accordance with its fiduciary duties to the stockholders, to change its recommendation to the stockholders upon receipt of a superior proposal subject to certain terms and conditions therein, including providing Gryphon notice of the superior proposal and time to make a counter-proposal to amend the terms of the Merger Agreement.

Under the Merger Agreement, Akerna has agreed to maintain certain indemnity rights (including advancing expenses) of the current officers and directors of Akerna as they exist in the governing documents of Akerna and maintain director and officers insurance for a period of 6 years following the closing of the Merger.

The closing of the Merger is subject to customary closing conditions, including, among other things, (i) the required approval of the stockholders of Akerna and Gryphon, (ii) the accuracy of the representations and warranties of the parties made in the Merger Agreement, subject to materiality qualifiers, (iii) compliance by the parties with their respective covenants under the Merger Agreement, and (iv) the approval of NASDAQ of the continued listing of Gryphon after the closing of the Merger. Further, closing of the Merger is conditioned on the simultaneous closing of the Sale Transaction. The obligation of Gryphon to close the Merger is also subject to satisfaction of certain additional conditions, including, among other things, (i) no Akerna material adverse effect, (ii) the exchanges contemplated in the exchange agreement (as dsecribed below) being completed, (iii) all redemptions of Akerna preferred stock being completed, (iv) all other exchanges being completed, (v) the winding down of Akerna's legacy business, and (vi) Akerna having $500,000 in cash on hand.

The parties may terminate the Merger Agreement upon mutual consent. Either party may terminate the Merger Agreement (i) if any of the representations or warranties of the other party set forth in the Merger Agreement shall not be true and correct or if the other party has failed to perform any covenant or agreement on the part of such party set forth in the Merger Agreement, (ii) the Merger is not consummated by the outside date (July 15, 2023), (iii) there is a governmental order prohibiting the Merger, and (iv) failure to obtain the stockholder vote. Gryphon may terminate the Merger Agreement if (i) the Board changes its recommendation to stockholders with respect to the Merger, (ii) the Board fails to reaffirm its recommendation to stockholders with respect to the Merger following a tender offer for Akerna, (iii) the Board fails to reaffirm its recommendation to stockholders with respect to the merger following a publicly announced acquisition proposal for Akerna, (iv) Akerna breaches its non-solicitation provisions, or (v) the Board resolves to do any of the above. Akerna may terminate the Merger Agreement for acceptance of a superior proposal.

In the event that Gryphon or Akerna terminates the Merger Agreement pursuant to certain of the sections set forth above, Akerna will be required to pay Gryphon a termination fee of $275,000, less any reimbursed expenses.

Exchange Agreement

Concurrently with the signing of the Merger Agreement, Akerna entered into exchange agreements (the "Exchange Agreements") with each of the holders (each, a "Holder") of its senior secured convertible notes (the "Notes") issued pursuant to a securities purchase agreement dated October 5, 2021 (the "Purchase Agreement").

Pursuant to the Exchange Agreements, each Holder has agreed to exchange a certain aggregate conversion amount of the Notes no greater than the lesser of (i) the aggregate amount then outstanding under the Notes and (ii) such portion of the maximum note amount set forth in the Exchange Agreement for such Holder that is convertible into 19.9% of the common stock of Akerna then outstanding into such number of shares of newly designated Series C Preferred Stock of Akerna, which will have an aggregate voting power and economic value equal to the aggregate number of shares of common stock then issuable upon conversion of such amount of Note.

The Series C Preferred Stock will have the terms and conditions set forth in the Certificate of Designation of the Series C Preferred Stock which is attached to the Exchange Agreement. The Series C Preferred Stock is non-convertible, voting preferred stock. Upon the closing of a change of control transaction, the Series C Preferred Stock will be automatically redeemed pursuant to its terms for consideration of a share equivalent basis equal to the same consideration held after the consummation of the change of control transaction by a stockholder that held one share of common stock prior to the consummation of the change of control transaction. The Series C Preferred Stock can also be redeemed for cash at the option of Akerna and in limited circumstances redeemed for cash at the option of the holder.

Under the Exchange Agreements, Akerna has agreed that 50% of the gross proceeds from any subsequent placement will be used to repay the aggregate amounts then outstanding under the Notes, allocated pro rata to the holders of Notes then outstanding based on the aggregate principal amount of Notes outstanding as of the time of such applicable subsequent placement ("Subsequent Placement Redemption").

Further, Akerna has agreed that on or prior to the closing of the Merger, if any Notes are then outstanding, Akerna will consummate one or more Company Optional Redemptions (as defined in the Notes) pursuant to Section 9(a) of the Notes (as amended under the Exchange Agreements), using the lesser of (A) the difference of (I) the sum of (x) all cash then held by Akerna (or any of its subsidiaries) and (y) any cash to be paid, directly or indirectly, to Akerna (or any of its subsidiaries) in connection with the transactions contemplated by the Merger Agreement and/or the SPA, as applicable, less (II) $500,000 and (B) an aggregate amount of cash equal to the Company Optional Redemption Price of the aggregate Conversion Amount (as defined in the Notes) of the Notes then outstanding (with each such Company Optional Redemption allocated pro rata to the holders of Notes then outstanding based upon the aggregate principal amount of Notes then outstanding) (the "Cash Sweep").

Upon closing of the Merger, the Exchange Agreements provide that if any portion of the Notes remain outstanding other than such portion of the applicable Company Optional Redemption Price of the Notes to be paid in cash pursuant to the Cash Sweep, to exchange the remaining Conversion Amount of the Notes into such aggregate number of shares of common stock (the "New Note Exchange Shares") equal to the quotient of (A) the applicable Company Optional Redemption Price of the remaining Conversion Amount of the Notes then outstanding divided by (B) the lower of (x) the lowest volume weighted average price of the Common Stock during the five (5) Trading Day period ending, and including, the Trading Day immediately prior to the closing and (y) the Conversion Price (as defined in the Notes) in effect as of the closing; and (ii) in accordance with the terms of the Series C Certificate of Designations, the Series C Preferred Stock shall be exchanged into the Change of Control Redemption/Exchange Consideration (as defined in the Series C Certificate of Designations) (with any shares of common stock included in such applicable Change of Control Redemption/Exchange Consideration, if any, the "New Preferred Exchange Shares", and together with the New Note Exchange Shares, the "Final Closing Exchange Shares"); provided, however, that to the extent that any issuances of Final Closing Exchange Shares to a Holder at the closing in accordance herewith or pursuant to the Series C Certificate of Designations, as applicable would result in such Holder and its other Attribution Parties (as defined in the Note) exceeding the Maximum Percentage (as defined in the Note) (as calculated in accordance with Section 3(d)(i) of the Note) (a "Maximum Percentage Event"), then such Holder shall not be entitled to receive such aggregate number of Final Closing Exchange Shares in excess of the Maximum Percentage (and shall not have beneficial ownership of such Final Closing Exchange Shares (or other equivalent security) as a result of the closing (and beneficial ownership) to such extent of any such excess), such remaining portion of such Final Closing Exchange Shares that would have otherwise been issued to the Holder at the Final Closing (such remaining portion of Final Closing Exchange Shares, the "Abeyance Shares"), such portion of the Note and/or shares of Series C Preferred Stock, as applicable, shall alternatively be exchanged for the right to receive such Abeyance Shares (with a beneficial ownership and issuance limitation substantially in the form of Section 3(d) of the Note, mutatis mutandis), at such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at

which time or times, if any, such Holder shall be granted such remaining portion of such Abeyance Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable.

Akerna and each of the Holders waived, in part, the terms and conditions of Section 9(a) of the Notes such that, in connection with any Subsequent Placement Redemption and/or the Cash Sweep, as applicable, the Note shall be subject to a Company Optional Redemption (as defined in the Note) (for the avoidance off doubt, at the applicable Company Optional Redemption Price (as defined in the Note) of the Conversion Amount subject to such Company Optional Redemption) without the requirement to satisfy any Equity Conditions (as defined in the Note) and a Company Optional Redemption Date (as defined in the Note) as of the date of consummation of such subsequent placement and/or the Cash Sweep, as applicable. Further, unless and until the Merger Agreement terminates prior to the consummation of the transactions contemplated thereunder, each Holder waived, in part, the Available Cash Test (as defined in the Note) in Section 14(r)(i) of the Note and the Daily Available Cash Test (as defined in Section 4(ff) of the Purchase Agreement), such that the Available Cash Test and the Daily Available Cash Test shall be deemed satisfied for the Holder if at least a certain amount set forth in the Exchange Agreement is held in the Master Restricted Account of such Holder.

In addition, subject to certain conditions, each Holder agreed to grant to Akerna certain releases from the security documents securing the Notes to permit Akerna to consummate the Sale Transaction and the Merger.

The closing of the exchange of a certain portion of the Notes into the Series C Preferred Stock and the exchange of any remaining Notes and the Series C Preferred Stock into shares of common stock at the Closing of the Merger is subject to certain customary conditions and, in relation to the exchange into Series C Preferred Stock, subject to Akerna completing a subsequent placement for gross aggregate proceeds of at least $500,000.

The Exchange Agreements contain customary representations, warranties and covenants made by Akerna and the Holders party thereto.

Akerna and Lender Support Agreements

In connection and concurrently with the execution of the SPA and the Merger Agreement, the executive officers and directors of Akerna who hold shares of Akerna's common stock entered into support agreements with POSaBIT and Gryphon, respectively, relating to the Sales Transaction and the Merger, respectively (the "Akerna Support Agreements"). The Akerna Support Agreements provide, among other things, that the stockholders who are parties thereto will vote all of the shares of Akerna capital stock held by them in favor of the Akerna Stockholder Proposals and against any competing acquisition proposals. The Akerna Support Agreements also place certain customary restrictions on the transfer of shares of Akerna held by the respective signatories thereto prior to the closing of the Sale Transaction or Merger, respectively.

Additionally, each of the Holders of the Notes entered into support agreement with Akerna relating to the Sale Transaction and the Merger, respectively (the "Lender Support Agreements"). The Lender Support Agreements provide, among other things, that the Holders will vote all of the shares of Akerna capital stock held by them in favor of the Akerna Stockholder Proposals and against any competing acquisition proposals. The Lender Support Agreements also place certain customary restrictions on the transfer of shares of Akerna held by the respective signatories thereto prior to the closing of the Sale Transaction or Merger, respectively.

Note Repricing Letter

On January 27, 2023, pursuant to Section 7(f) of the Notes, Akerna provided notice (the "Note Repricing Letter") to the Holders of the Notes seeking the consent of such Holders under Section 7(f) of the Notes to lower the conversion price of the Notes to $1.20. Akerna may terminate the alternative conversion price at any time on or following the date that is the later of (i) 14 calendar days from the effective time of the lower conversion price and (ii) the date on which the Company closes on a subsequent equity offering for a minimum of $500,000 in gross aggregate proceeds, which subsequent offering will not include the offering of Excluded Securities (as defined in the Notes).

The foregoing descriptions of the SPA, the Merger Agreement, the Exchange Agreements, the Akerna Support Agreements, the Lender Support Agreements and the Note Repricing Letter (collectively, the "Transaction Documents") do not purport to be complete and are qualified in their entirety by reference to the full text of the Transaction Documents, which are filed as Exhibits 2.1 through 2.6, 10.1 and 10.2 to this Current Report on Form 8-K and are incorporated herein by reference.

The Transaction Documents have been attached to this Current Report on Form 8-K to provide investors with information regarding their terms. The Transaction Documents are not intended to provide any other factual information about any party thereto or any of their respective subsidiaries or affiliates. The representations, warranties and covenants contained in the Transaction Documents were made only for purposes of the Transaction Documents as of the specific dates set forth therein, were solely for the benefit of the parties thereto, may be subject to important qualifications and limitations agreed upon by the parties for the purposes of allocating contractual risk among such parties of establishing these matters as facts, and may be subject to standards of materiality applicable to such contracting parties that differ from those applicable to investors. Investors should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties to the Transaction Documents or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Transaction Documents, which subsequent information may or may not be fully reflected in Akerna's public disclosures.

Item 3.03. Material Modifications to Rights of Security Holders.

The information in Item 1.01 is incorporated by reference into this Item 3.03.

As a result of the adjustment to the conversion price of the Notes, pursuant to the terms of Akerna's common stock purchase warrants issued on July 5, 2022 (the "Warrants"), the exercise price of the Warrants was automatically adjusted in the same proportion as the adjustment to the conversion price of the Notes from $3.518 to $0.88. The Warrants may only currently be exercised on a cashless basis.

Item 7.01. Regulation FD Disclosure.

On January 27, 2023, Akerna, POSaBIT and Gryphon issued a joint press release announcing the SPA and the Merger Agreement. A copy of this press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference herein.

The information in this Item 7.01, and Exhibit 99.1 attached hereto, is being furnished and shall not be deemed "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, regardless of any general incorporation language in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed as part of this report:

Exhibit Number	Description
2.1*	Securities Purchase Agreement, dated January 27, 2023, by and among Akerna and POSaBIT
2.2*	Agreement and Plan of Merger, dated January 27, 2023, by and among Akerna, Akerna Merger Co and Gryphon
2.3	Form of Support Agreement, dated January 27, 2023, by and among POSaBIT and each of the parties named therein
2.4	Form of Support Agreement, dated January 27, 2023, by and among Gryphon and each of the parties named therein
2.5	Form of Support Letter, dated January 27, 2023, by and among Akerna and certain lenders in relation to the Sale Transaction
2.6	Form of Support Letter, dated January 27, 2023, by and among Akerna and certain lenders in relation to the Merger
10.1*	Exchange Agreement, dated January 27, 2023, by and among Akerna and certain lenders
10.2	Form of Repricing Letter, dated January 27, 2023, by and among Akerna and certain lenders
99.1	Joint Press Release of Akerna, Gryphon and POSaBIT dated January 27, 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 and between Akerna and POSaBIT. In connection with the proposed transactions, Akerna intends to file relevant materials with the United States Securities and Exchange Commission, or the SEC, including a registration statement on Form S-4 that will contain a prospectus and a proxy statement. Akerna will mail the proxy statement/prospectus to the Akerna stockholders, and the securities to be issued pursuant to the prospectus 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 when they become available 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, once available, 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, POSaBIT 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 from the stockholders of Akerna, will be set forth in the proxy statement/prospectus, which will be included in Akerna's registration statement on Form S-4 when it is filed with the SEC. 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 Akerna. Forward-looking statements involve risks and uncertainties and include, but are not limited to, statements about the structure, timing and completion of the proposed transactions; the listing of the combined company on Nasdaq after the closing of the proposed merger; expectations regarding the ownership structure of the combined company after the closing of the proposed merger; the expected executive officers and directors of the combined company; the expected cash position of each of Akerna and Gryphon and the combined company at the closing of the proposed merger; the future operations of the combined company; and other statements that are not historical fact. 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 POSaBIT to consummate the proposed merger or sale transaction, 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; and (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. 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, 2021 and Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 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 expressly disclaims 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: January 27, 2023

AKERNA CORP.

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

SECURITIES PURCHASE AGREEMENT
between
AKERNA CORP.
and
AKERNA CANADA AMPLE EXCHANGE INC.
and
POSABIT SYSTEMS CORPORATION
dated as of
January 27, 2023

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "**Agreement**"), dated as of January 27, 2023, is entered into among Akerna Corp., a Delaware corporation ("**Seller**"), Akerna Canada Ample Exchange Inc., an Ontario corporation ("**ExchangeCo**"), and POSaBIT Systems Corporation, a British Columbia corporation ("**Buyer**").

RECITALS

WHEREAS, Seller owns all of the issued and outstanding membership interests (the "**Membership Interests**"), of MJ Freeway, LLC, a Colorado limited liability company ("**MJF**");

WHEREAS, Seller owns all of the issued and outstanding common shares of Akerna Canada Holdings, Inc., an Ontario corporation;

WHEREAS, Akerna Canada Holdings, Inc. owns all of the issued and outstanding common shares of ExchangeCo;

WHEREAS, ExchangeCo owns all of the issued and outstanding common and preferred shares (the "**Shares**"), of Ample Organics Inc., an Ontario corporation (the "**AO**");

WHEREAS, Seller wishes to sell to Buyer (or a Subsidiary of Buyer designated by Buyer), and Buyer wishes to purchase (or cause a Subsidiary of Buyer designated by Buyer to purchase) from Seller, the Membership Interests, subject to the terms and conditions set forth herein;

WHEREAS, ExchangeCo wishes to sell to Buyer, and Buyer wishes to purchase from ExchangeCo, the Shares, subject to the terms and conditions set forth herein; and

WHEREAS, in order to induce Buyer to enter into this Agreement and to cause the transactions contemplated by this Agreement to be consummated, the directors and officers of Seller and certain stockholders of or lenders to the Seller, in each case, listed on Schedule A hereto, are executing, concurrently with the execution and delivery of this Agreement, Voting and Support Agreements in favor of Seller or Buyer in the form(s) substantially attached hereto as Exhibit A (the "**Voting and Support Agreements**").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

"**Acquisition Proposal**" means an Acquisition Proposal for Company Group or an Acquisition Proposal for Seller.

"**Acquisition Proposal for Company Group**" means, other than with respect to the Merger Transaction, any inquiry, proposal or offer, whether written or oral, from any Person or group of Persons (other than an offer or proposal made or submitted by or on behalf of Buyer or any of its Affiliates) contemplating or otherwise relating to any Acquisition Transaction for Company Group.

"**Acquisition Proposal for Seller**" means, other than with respect to the Merger Transaction, any inquiry, proposal or offer, whether written or oral, from any Person or group of Persons (other than an offer or proposal made or submitted by or on behalf of Buyer or any of its Affiliates) contemplating or otherwise relating to any Acquisition Transaction for Seller.

"**Acquisition Transaction for Company Group**" means, other than the Merger Transaction, any transaction or series of transactions involving: (a) any merger, consolidation, amalgamation, share or unit exchange, business combination, issuance of securities, acquisition of securities, liquidation, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which a Company Group member is a constituent corporation or company; (ii) in which a Person or "group" (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of a Company Group member; or (iii) in which a Company Group member issues securities representing more than 20% of the outstanding securities of any class of voting securities of a Company Group member; (b) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the fair market value of the assets of the Company Group, taken as a whole (as determined by Seller's board of directors); or (c) any tender offer or exchange offer, that if consummated would result in any Person or group of Persons beneficially owning 20% or more of the outstanding equity securities of a Company Group member.

"**Acquisition Transaction for Seller**" means, other than the Merger Transaction, any transaction or series of transactions involving: (a) any merger, consolidation, amalgamation, share or unit exchange, business combination, issuance of securities, acquisition of securities, liquidation, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which Seller is a constituent corporation or company; (ii) in which a Person or "group" (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of Seller; or (iii) in which Seller issues securities representing more than 20% of the outstanding securities of any class of voting securities of Seller; (b) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the fair market value of the assets of Seller and its Subsidiaries, taken as a whole (as determined by Seller's board of directors); or (c) any tender offer or exchange offer, that if consummated would result in any Person or group of Persons beneficially owning 20% or more of the outstanding equity securities of Seller.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "**control**" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 6.06.

"**Ancillary Documents**" means the Commercial Agreements, the Voting and Support Agreements, and all other agreements, documents, instruments or certificates delivered or required to be delivered by any party to this Agreement at or prior to the Closing pursuant to this Agreement.

"**Annual Financial Statements**" has the meaning set forth in Section 3.06.

"**AO**" has the meaning set forth in the recitals.

"**AO Employee**" has the meaning set forth in Section 5.18(b)(i).

"**AO Group**" means AO, AO's wholly owned Subsidiaries, if any, and AO's non-wholly owned Subsidiaries, if any.

"**AO Prospective Employee**" has the meaning set forth in Section 5.18(b)(ii).

"**AO-Related Employee**" has the meaning set forth in Section 5.18(b)(i).

"**AO Retained Employee**" has the meaning set forth in Section 5.18(b)(ii).

"**Assignments**" has the meaning set forth in Section 2.03(b)(i).

"**Balance Sheet**" has the meaning set forth in Section 3.06.

"**Balance Sheet Date**" has the meaning set forth in Section 3.06.

"**Benefit Plan**" has the meaning set forth in Section 3.23(a).

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in (i) Denver, Colorado, USA, or (ii) Vancouver, British Columbia, Canada are authorized or required by Law to be closed for business.

"**Buyer**" has the meaning set forth in the preamble.

"**Buyer Tax Returns**" has the meaning set forth in Section 6.01(b)(ii).

"**Buyer's Accountants**" means Amarino LLP.

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act of 2020, as may be amended or modified from time to time, including any rules or regulations promulgated thereunder (including any analogous or similar provision under state and local Law).

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

"**Closing**" has the meaning set forth in Section 2.05.

"**Closing Date**" has the meaning set forth in Section 2.05.

"**Closing Date Payment**" has the meaning set forth in Section 2.04(a)(i).

"**Closing Indebtedness**" means the outstanding Indebtedness of the Company Group as of 12:01 a.m. MST on the Closing Date.

"**Closing Indebtedness Certificate**" means a certificate executed by the Chief Financial Officer of Seller certifying on behalf of Seller an itemized list of all outstanding Indebtedness of the Company Group as of 12:01 a.m. MST on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.

"**Closing Statement**" has the meaning set forth in Section 2.04(b)(i).

"**Closing Transaction Expenses**" means the amount of unpaid Transaction Expenses of the Company Group as of 12:01 a.m. MST on the Closing Date.

"**Closing Transaction Expenses Certificate**" means a certificate executed by the Chief Financial Officer of Seller, certifying the amount of Transaction Expenses of the Company Group remaining unpaid as of 12:01 a.m. MST on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the person to whom such expense is owed).

"**Closing Working Capital**" means: (a) the Current Assets of the Company Group, less (b) the Current Liabilities of the Company Group, in each case as adjusted as set forth on Schedule B and determined as of 12:01 a.m. MST on the Closing Date.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Commercial Agreements**" mean the Payments Services Referral Agreement, the Development Agreement, and the Mutual Referral Agreement entered into between Buyer and Seller concurrent with the execution of this Agreement.

"**Company Group**" means AO Group and MJF Group.

"**Company Group member**," "**member of Company Group**," or any other similar language means a member of AO Group or MJF Group.

"**Company Intellectual Property**" means all Intellectual Property that is owned or purported to be owned by AO, MJF or another Company Group member.

"**Company IP Agreements**" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to Intellectual Property to which a Company Group member is a party, beneficiary or otherwise bound.

"**Company IP Registrations**" means all Company Intellectual Property that is subject to any issuance, registration or application by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued patents, registered trademarks, domain names and copyrights, and pending applications for any of the foregoing.

"**Company IT Systems**" means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company Group.

"**Consolidated Returns**" means any and all Tax Returns of the Seller Group that includes any Company Group member.

"**Contemplated Transactions**" means (A) the Merger Transaction, (B) the change of control of Seller resulting from the Merger Transaction, to the extent such approval is necessary, (C) the other transactions contemplated by the Merger Agreement, (D) the Reverse Split, (E) any amendment of Seller's certificate of incorporation to increase the authorized shares of Seller's common stock, (F) the amendment of Seller's certificate of incorporation to effect the name change of Seller, (G) seeking advisory approval of a proposal to Seller's stockholders for a non-binding, advisory vote to approve certain compensation that may become payable to Seller's named executed officers in connection with the completion of the Merger Transaction, if applicable, or (H) the transactions contemplated by this Agreement or the Ancillary Documents.

"**Contracts**" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"**COVID Related Deferrals**" shall mean any Tax liabilities or other amounts or liabilities for or allocable to any taxable period ending on or prior to the Closing Date the payment of which is deferred, on or prior to the Closing Date, to a taxable period (or portion thereof) beginning after the Closing Date pursuant to (a) the CARES Act, (b) the Continued Assistance Act, (c) the Executive Order signed by President Trump on August 8, 2020, as may be amended or modified from time to time, (d) the Consolidated Appropriations Act of 2021, which was signed into law on December 27, 2020 and any other Law or executive order or Presidential Memorandum (including the Presidential Memorandum described in IRS Notice 2020-65) related to COVID-19, in each case any rules or regulations promulgated thereunder (including any analogous provisions under state and local law) and any amendments thereof.

"**Credit for Referral Payments**" means fifty percent (50%) of the aggregate cash advances by Buyer or its Affiliates pursuant to the Commercial Agreements.

"**Current Assets**" means cash and cash equivalents, accounts receivable (less allowance for doubtful accounts), inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (b) deferred Tax assets and (c) receivables from any of the Company Group's Affiliates, directors, managers, employees, officers, stockholders or members and any of their respective Affiliates, determined in accordance with GAAP applied using the

same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

"**Current Government Contracts**" has the meaning set forth in Section 3.16(a).

"**Current Liabilities**" means accounts payable, accrued Taxes and accrued expenses, but excluding payables to any of the Company Group's Affiliates, directors, managers, employees, officers, stockholders or members and any of their respective Affiliates, deferred Tax liabilities, Transaction Expenses and the current portion of any Indebtedness of the Company Group, determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

"**Do not have Unreasonably Small Capital**" has the meaning set forth in Section 3.28(g).

"**Disclosure Schedules**" means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

"**Disputed Amounts**" has the meaning set forth in Section 2.04(c)(iii).

"**Dollars or $**" means the lawful currency of the United States.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**Environmental Attributes**" means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of the Company Group as of: (i) the date of this Agreement; and (ii) future years for which allocations have been established and are in effect as of the date of this Agreement.

"**Environmental Claim**" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence of, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"**Environmental Law**" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient or indoor air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act of 1910, as amended, 7 U.S.C. §§ 136 et seq.; the Oil Pollution Act of 1990, as amended, 33 U.S.C. §§ 2701 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

"**Environmental Notice**" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"**Environmental Permit**" means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate**" means all employers (whether or not incorporated) that would be treated together with any Company Group member or any of its Affiliates as a "single employer" within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**Estimated Closing Indebtedness**" has the meaning set forth in Section 2.04(a)(i)(B).

"**Estimated Closing Statement**" has the meaning set forth in Section 2.04(a)(ii).

"**Estimated Closing Transaction Expenses**" has the meaning set forth in Section 2.04(a)(i)(C).

"**Estimated Closing Working Capital**" has the meaning set forth in Section 2.04(a)(ii).

"**Estimated Credit for Referral Payments**" has the meaning set forth in Section 2.04(a)(i)(D).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**ExchangeCo**" has the meaning set forth in the recitals.

"**Export Control Laws**" means (i) all U.S. import and export Laws (including those Laws under the authority of U.S. Departments of Commerce (Bureau of Industry and Security) codified at 15 CFR, Parts 700-799; Homeland Security (Customs and Border Protection) codified at 19 CFR, Parts 1-199; State (Directorate of Defense Trade Controls) codified at 22 CFR, Parts 103, 120-130; and Treasury (Office of Foreign Assets Control) codified at 31 CFR, Parts 500-599) and (ii) all comparable applicable Laws outside the United States.

"**Fair Value**" has the meaning set forth in Section 3.28(b).

"**FAR**" means the Federal Acquisition Regulation and any agency supplemental thereto.

"**Form S-4 Registration Statement**" means the registration statement on Form S-4 to be filed with the SEC by Seller registering the public offering and sale of Seller's common stock in the Merger Transaction, including all shares of Seller's common stock to be issued in exchange for all shares of capital stock in Gryphon, as said registration statement may be amended prior to the time it is declared effective by the SEC.

"**Financial Statements**" has the meaning set forth in Section 3.06.

"**Fraud**" means common law fraud under the law of the State of Delaware.

"**GAAP**" means United States generally accepted accounting principles in effect from time to time.

"**Government Bid**" means any bid, offer, proposal or quotation made or submitted by a Company Group member prior to the Closing Date which, if accepted or selected for ware, would result in a Government Contract.

"**Government Contracts**" has the meaning set forth in Section 3.09(a)(viii).

"**Government Contract Loss**" means that the total direct and indirect costs incurred by the Company Group under a Government Contract exceed the total amount of payments that have been or will be received by the Company Group under such Government Contract.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Gryphon**" means Gryphon Digital Mining, Inc., a Delaware corporation.

"**GST/HST**" means all goods and services taxes and harmonized sales taxes imposed under Part IX of the Excise Tax Act (Canada).

"**Hazardous Materials**" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Identified Contingent Liabilities**" has the meaning set forth in Section 3.28(e).

"**Indebtedness**" means, without duplication and with respect to the Company Group, all: (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital); (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) guarantees made by any Company Group member on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); (h) all obligations with respect to the net current Tax liabilities of the Company Group that are allocable to any Pre-Closing Tax Period (treating for purposes of this Agreement the taxable year of the Company Group that includes the Closing Date as closing on (and including) the Closing Date), and including any COVID Related Deferrals; (i) unpaid employer Liabilities for salary, wages, benefits, payroll, bonuses, commissions, vacation, sick days and other liabilities, including any termination pay, severance, or pay-in-lieu-of-notice payable to any employee; and (j) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (i).

"**Indemnified Taxes**" means (without duplication), except to the extent treated as Closing Indebtedness or as a liability in the calculation of Closing Working Capital, (a) any and all Taxes (or the non-payment thereof) of the Company Group for all Pre-Closing Tax Periods, and, in the case of a Straddle Period, the portion of any Taxes of the Company Group for the portion of the Straddle Period ending on the Closing Date as determined pursuant to Section 6.04, (b) any and all Taxes of any member of an affiliated, consolidated, combined or unitary group of which any member of the Company Group is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar Law, (c) any and all Taxes of any Person for any period (other than any member of the Company Group or Buyer or any Affiliate thereof) imposed on the Company Group as a transferee or successor, where the transaction giving rise to the liability on the part of the Company Group occurred on or prior to the Closing Date by Law, by Contract or otherwise, in each case, other than commercial agreements entered into in the ordinary course of business, the principle purpose of which is not Tax; (d) any and all Taxes of any Person imposed on the Company Group as a result of any Tax Sharing Agreement entered on or into prior to the Closing Date for any Pre-Closing Tax Period; (e) any and all Taxes arising out of or resulting from any inclusion under Sections 951 and 951A of the Code (or any corresponding or similar provision under applicable Law with respect to Taxes) in respect of any "foreign corporation" owned, directly or indirectly, by any Company Group member to the extent such inclusion results from any transaction or ownership of assets occurring between the beginning of the taxable year of such foreign corporation that includes the Closing Date and through the Closing; (f) any and all Taxes resulting from any election pursuant to Section 965 of the Code (or any corresponding or similar provisions of state, local or non-U.S. Tax law); (g) any and all COVID Related Deferrals; and (h) any and all Transfer Taxes, which Seller is liable for pursuant to Section 6.01(c).

"**Independent Accountant**" has the meaning set forth in Section 2.04(c)(iii).

"**Insurance Policies**" has the meaning set forth in Section 3.19.

"**Intellectual Property**" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("**Patents**"); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing ("**Trademarks**"); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing ("**Copyrights**"); (d) internet domain names and social media account or user names (including "handles"), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and proprietary information and all rights therein ("**Trade Secrets**"); (h) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof; (i) rights of publicity; and (j) all other intellectual or industrial property and proprietary rights.

"**Interim Balance Sheet**" has the meaning set forth in Section 3.06.

"**Interim Balance Sheet Date**" has the meaning set forth in Section 3.06.

"**Interim Financial Statements**" has the meaning set forth in Section 3.06.

"**Key Employees**" has the meaning set forth in Section 7.02(p).

"**Knowledge of Seller or Seller's Knowledge**" or any other similar knowledge qualification, means the actual or constructive knowledge of any director, manager or officer of Seller or any Company Group member, in each case after due inquiry.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Liabilities**" has the meaning set forth in Section 3.07.

"**Licensed Intellectual Property**" means all Intellectual Property in which any Company Group member holds any rights or interests granted by other Persons, including Seller or any of its Affiliates.

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that "Losses" shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Company Group, or (b) the ability of Seller or ExchangeCo to consummate the transactions contemplated hereby on a timely basis; *provided*, *however*, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company Group operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or explicitly permitted by this Agreement, except pursuant to Section 3.05 and Section 5.08, or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer, *provided that* such action is explicitly described in such written consent or written request; (vi) any changes in applicable Laws or accounting rules, including GAAP or the enforcement, implementation, or interpretation thereof; (vii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors, or others having relationships with the Company Group; (viii) any natural or man-made disaster or acts of God; (ix) any epidemics, pandemics, disease outbreaks, or other public health emergencies; or (x) any failure by the Company Group to meet any internal or published projections, forecasts, or revenue or earnings predictions, *provided that* the underlying causes of such failures (subject to other provisions of this definition) shall not be excluded; and *provided further*, however, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) or (viii) through (ix) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company Group compared to other participants in the industries in which the Company Group conducts its businesses.

"**Material Contracts**" has the meaning set forth in Section 3.09(a).

"**Material Customers**" has the meaning set forth in Section 3.15(a).

"**Material Suppliers**" has the meaning set forth in Section 3.15(b).

"**Membership Interests**" has the meaning set forth in the recitals.

"**Merger Transaction**" has the meaning set forth in Section 3.28.

"**MJF**" has the meaning set forth in the recitals.

"**MJF Group**" means MJF, MJF's wholly owned Subsidiaries, if any, and MJF's non-wholly owned Subsidiaries, if any.

"**MJF Prospective Employee**" has the meaning set forth in Section 5.18(a)(ii).

"**MJF-Related Employee**" has the meaning set forth in Section 5.18(a)(i).

"**Multiemployer Plan**" has the meaning set forth in Section 3.23(c).

"**Non-U.S. Benefit Plan**" has the meaning set forth in Section 3.23(a).

"**Notice Period**" has the meaning set forth in Section 5.14(c).

"**Off-the-Shelf Software**" means commercially available "shrink wrap," "click-through" or other software copyrighted by third parties, in each case under standard end-user object code license agreements and available for an annual or one-time license fee of no more than $10,000.

"**Organizational Documents**" means (a) in the case of a Person that is a corporation, its articles or certificate of incorporation and its by-laws, regulations or similar governing instruments required by the laws of its jurisdiction of formation or organization; (b) in the case of a Person that is a partnership, its articles or certificate of partnership, formation or association, and its partnership agreement (in each case, limited, limited liability, general or otherwise); (c) in the case of a Person that is a limited liability company, its articles or certificate of formation or organization, and its limited liability company agreement or operating agreement; and (d) in the case of a Person that is none of a corporation, partnership (limited, limited liability, general or otherwise), limited liability company or natural person, its governing instruments as required or contemplated by the laws of its jurisdiction of organization.

"**Outside Date**" means July 15, 2023; *provided*, *however*, if the SEC has not declared effective under the Securities Act the Form S-4 Registration Statement by May 15, 2023, then either Buyer or Seller shall be entitled to extend the Outside Date by up to sixty (60) days by providing written notice to the other.

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in Section 3.10(a).

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Platform Agreements**" has the meaning set forth in Section 3.12(h).

"**Post-Closing Adjustment**" has the meaning set forth in Section 2.04(b)(iii).

"**Pre-Closing Tax Period**" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"**Present Fair Salable Value**" has the meaning set forth in Section 3.28(c).

"**Proxy Statement / Prospectus**" means the proxy statement, prospectus, and/or information statement to be sent to Seller's stockholders in connection with the Seller's Stockholders' Meeting.

"**Purchase Price**" has the meaning set forth in Section 2.02.

"**Qualified Benefit Plan**" has the meaning set forth in Section 3.23(c).

"**Real Property**" means the real property owned, leased or subleased by any Company Group member, together with all buildings, structures and facilities located thereon.

"**Release**" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Representative**" means, with respect to any Person, any and all directors, managers, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**Required Seller's Stockholder Vote**" means the affirmative vote of a majority of the issued and outstanding voting stock of the Seller entitled to vote at the Seller's Stockholder Meeting.

"**Resolution Period**" has the meaning set forth in Section 2.04(c)(ii).

"**Restricted Business**" means the creation and selling of software and data solutions for businesses in the areas of cultivation management, point of sale, patient management and inventory tracking systems.

"**Restricted Period**" has the meaning set forth in Section 5.07(a).

"**Review Period**" has the meaning set forth in Section 2.04(c)(i).

"**SEC**" means the United States Securities and Exchange Commission.

"**Section 503**" has the meaning set forth in Section 3.24(g).

"**Securities**" means each of the Membership Interests and the Shares.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Seller**" has the meaning set forth in the preamble.

"**Seller Board Recommendation**" has the meaning set forth in Section 5.14(b).

"**Seller Board Adverse Recommendation Change**" has the meaning set forth in Section 5.14(b).

"**Seller Group**" means (a) the affiliated group as defined in Section 1504(a) of the Code of which Seller is the common parent, and (b) with respect to each state, local or foreign jurisdiction in which Seller or its any of its Subsidiaries or Affiliates files a consolidated, combined or unitary Tax Return and in which AO, MJF or any other member of the Company Group is or is required to be included, the group with respect to which such Return is filed.

"**Seller's Stockholder Matters**" has the meaning set forth in Section 5.14(a).

"**Seller's Stockholders' Meeting**" has the meaning set forth in Section 5.14(a).

"**Seller Reviewed Returns**" has the meaning set forth in Section 6.01(b)(ii).

"**Seller's Accountants**" means Marcum LLP.

"**Shares**" has the meaning set forth in the recitals.

"**Single Employer Plan**" has the meaning set forth in Section 3.23(c).

"**Solvent**" has the meaning set forth in Section 3.28(a).

"**Stated Liabilities**" has the meaning set forth in Section 3.28(d).

"**Statement of Objections**" has the meaning set forth in Section 2.04(c)(ii).

"**Straddle Period**" means any taxable year or period beginning before and ending after the Closing Date.

"**Subsidiary**" of a Person means a corporation, partnership, limited liability company, or other business entity of which a majority of the shares of voting securities or other equity securities is at the time beneficially owned, or the management of which is otherwise controlled, directly or indirectly, through one or more intermediaries, or both, by such Person.

"**Superior Offer**" means a bona fide Acquisition Proposal for Seller (with all references to 20% in the definition of Acquisition Transaction for Seller being treated as references to 50% for these purposes) made by a third party that is on terms and conditions that Seller's board of directors determines, in its reasonable, good faith judgment, after obtaining and taking into account such matters that Seller's board of directors deems relevant following consultation with its outside legal counsel and financial advisor, if any, (i) is more favorable, from a financial point of view, to Seller's stockholders than the terms of the transactions contemplated by this Agreement and the Merger Transaction, taking into account any factors that Seller's board of directors deems appropriate; and (ii) is reasonably capable of being consummated.

"**Target Working Capital**" means between One Hundred Fifty Thousand Dollars ($150,000.00) and Two Hundred Fifty Thousand Dollars ($250,000).

"**Tax**" or "**Taxes**" means: (a) any and all federal, state, local, and non-U.S. taxes, charges, fees, levies, imposts, duties, excises, premiums and other similar assessments or charges of any kind whatsoever, including income taxes (whether imposed on or measured by net income, gross income, income as specially defined, earnings, profits, or selected items of income, earnings, or profits), gains, capital taxes, capital stock taxes, production taxes, gross receipts taxes, environmental taxes, any digital sales and advertising taxes, sales taxes, use taxes, value added taxes, GST/HST, provincial sales taxes, use taxes, excise taxes, special assessment taxes, business taxes, health taxes, employee health taxes, recapture, escheat, abandoned or unclaimed property, transfer taxes, land transfer taxes, gift taxes, wealth taxes, environment taxes, net worth taxes, indebtedness taxes, surplus taxes, registration duties, franchise taxes, license taxes, withholding taxes or other withholding obligations, payroll taxes, employment taxes, excise taxes, severance taxes, employer and employee social security contributions, social security premiums, workers' compensation premiums, employment or unemployment insurance or compensation premiums, severance taxes, social services taxes, education taxes, utility taxes, surtaxes, stamp taxes, inheritance, highway use, commercial rent, occupation taxes, premium taxes, ad valorem taxes, real or personal property taxes, windfall profits taxes, estimated, alternative or add-on minimum taxes, import or export taxes and customs duties, together with all interest, penalties, fines, and additions thereto (whether disputed or not); (b) any liability for any amounts of the type described in clause (a) as a result of being or ceasing to be a member of any affiliated group (including any liability under Treasury Regulation Section 1.1502-6 or any comparable provision of other applicable Law); and (c) any liability for any amounts of the type described in clause (a) or (b) arising under Contract, by operation of law, by reason of being a successor or transferee, or otherwise.

"**Tax Act**" means the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), the *Income Tax Application Rules*, R.S.C. 1985, c. 2 (5th Supp.), and the *Income Tax Regulations*, C.R.C., c. 945, in each case as amended from time to time.

"**Tax Claim**" has the meaning set forth in Section 6.07.

"**Tax Return**" means any return, election, estimates, designation, form, declaration, report, claim for refund, information return, statement or any other document of any nature whatsoever relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Tax Sharing Agreement**" means any Contract (including any provision of a contract) pursuant to which any member of the Company Group is obligated to indemnify any other Seller Group member for, or otherwise pay, any Tax of another Seller Group member, or share any Tax benefit with another Seller Group member, in each case, other than commercial agreements entered into in the ordinary course of business, the principle purpose of which is not Tax.

"**Territory**" means (i) the United States of America, (ii) Canada, (iii) any other country where any Company Group member does business as of the Closing, or (iv) any other country where any Company Group member plans, as of the Closing, to do business within 18 months after of the Closing.

"**Transfer Taxes**" means all sales, use, transfer, real property transfer, valued added, goods and services, gross receipts, excise, conveyance, documentary, stamp duty, recording, registration and other similar Taxes, charges and fees (including any penalties, interest and additions to Tax) incurred in connection with the transactions contemplated by this Agreement, whether payable by Buyer, any member of the Seller Group, any member of the Company Group, or any Affiliate thereof.

"**Transaction Expenses**" means all fees and expenses incurred by any Company Group member, Seller or ExchangeCo at or prior to the Closing in connection with (i) the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions contemplated hereby and thereby or (ii) any Action (such fees and expenses to include any invoices or work-in-progress relating to such Action).

"**Undisputed Amounts**" has the meaning set forth in Section 2.04(c)(iii).

"**Union**" has the meaning set forth in Section 3.24(d).

"**VEVRAA**" has the meaning set forth in Section 3.24(g).

"**Voting and Support Agreements**" has the meaning set forth in the recitals.

"**WARN Act**" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

"**Will be able to pay their Stated Liabilities and Identified Contingent Liabilities as they mature**" has the meaning set forth in Section 3.28(f).

ARTICLE II
PURCHASE AND SALE

Section 2.01 Purchase and Sale . Subject to the terms and conditions set forth herein, at the Closing:

(a) Seller shall sell to Buyer (or a Subsidiary of Buyer designated by Buyer), and Buyer shall purchase (or cause a Subsidiary of Buyer designated by Buyer to purchase) from Seller, all of Seller's right, title, and interest in and to the Membership Interests, free and clear of all Encumbrances (other than Encumbrances pursuant to securities Laws of general application); and

(b) ExchangeCo shall sell to Buyer, and Buyer shall purchase from ExchangeCo, all of ExchangeCo's right, title, and interest in and to the Shares, free and clear of all Encumbrances (other than Encumbrances pursuant to securities Laws of general application);

for the consideration specified in Section 2.02.

Section 2.02 Purchase Price.

(a) The aggregate purchase price for the Securities shall be Four Million Dollars ($4,000,000), subject to adjustment pursuant to Section 2.04 hereof (the "**Purchase Price**").

(b) The Purchase Price shall be allocated as follows:

(i) eighty percent (80%) of the Purchase Price shall be allocated to the Membership Interests; and

(ii) the balance of the Purchase Price shall be allocated to the Shares;*provided*, *however* that in the event that the Buyer shall provide notice of its intent not to proceed with the acquisition of the Shares pursuant to Section 7.02(w) or (z) below, then the Purchase Price shall not be reduced but will be allocated solely to the Purchase Price of the Membership Interests.

Section 2.03 Transactions to be Effected at the Closing.

(a) At the Closing, Buyer shall:

(i) deliver to Seller (for the benefit of Seller and ExchangeCo):

(A) the Closing Date Payment by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer no later than three Business Days prior to the Closing Date; and

(B) the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 7.03 of this Agreement.

(ii) pay, on behalf of the Company Group, Seller or ExchangeCo, the following amounts:

(A) Indebtedness of any Company Group member to be paid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Indebtedness Certificate; and

(B) any Transaction Expenses unpaid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Transaction Expenses Certificate.

(b) At the Closing, Seller and ExchangeCo shall deliver to Buyer:

(i) (A) an assignment of the Membership Interests to Buyer (or a Subsidiary of Buyer designated by Buyer) in form and substance satisfactory to Buyer, duly executed by Seller, and (B) certificates representing the Shares, free and clear of all Encumbrances (other than Encumbrances pursuant to securities Laws of general application), duly endorsed in blank by ExchangeCo or accompanied by instruments of transfer duly endorsed in blank by ExchangeCo, with all required transfer tax stamps (if any) affixed thereto (collectively, the "**Assignments**"); and

(ii) the Ancillary Documents and all other agreements, documents, instruments or certificates required to be delivered by Seller or ExchangeCo at or prior to the Closing pursuant to Section 7.02 of this Agreement.

Section 2.04 Purchase Price Adjustment.

(a) Closing Adjustment.

(i) At the Closing, the Purchase Price shall be adjusted in the following manner:

(A) either (1) an increase by the amount, if any, by which the Estimated Closing Working Capital (as determined in accordance with Section 2.04(a)(ii)) is greater than the top of the range of the Target Working Capital, or (2) a decrease by the amount, if any, by which the Estimated Closing Working Capital is less than the bottom of the range of the Target Working Capital;

(B) a decrease by the estimated Closing Indebtedness ("**Estimated Closing Indebtedness**");

(C) a decrease by the amount of estimated Closing Transaction Expenses ("**Estimated Closing Transaction Expenses**"); and

(D) a decrease by the amount of estimated Credit for Referral Payments ("**Estimated Credit for Referral Payments**").

The net amount after giving effect to the adjustments listed above shall be the "**Closing Date Payment**."

(ii) At least three (3) Business Days before the Closing, Seller shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the "**Estimated Closing Working Capital**"), Estimated Closing Indebtedness, Estimated Closing Transaction Expenses, and Estimated Credit for Referral Payments, which statement shall contain an estimated balance sheet of the Company Group as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital, Estimated Closing Indebtedness, Estimated Closing Transaction Expenses, and Estimated Credit for Referral Payments (the "**Estimated Closing Statement**"), and a certificate of the Chief Financial Officer of Seller certifying that the Estimated Closing Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such Estimated Closing Statement was being prepared and audited as of a fiscal year end, as adjusted as set forth on Schedule B. The Estimated Closing Statement shall include a reasonably detailed explanation and supporting detail of the calculations thereof.

(b) Post-Closing Adjustment.

(i) Within seventy-five (75) days after the Closing Date, Buyer shall prepare and deliver to Seller a statement setting forth its calculation of Closing Working Capital, Closing Indebtedness, Closing Transaction Expenses, and Credit for Referral Payments, which statement shall contain a balance sheet of the Company Group as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital, Closing Indebtedness, Closing Transaction Expenses, and Credit for Referral Payments (the "**Closing Statement**") and a certificate of the Chief Financial Officer of Buyer certifying that the Closing Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Annual Financial Statements for the most recent fiscal year end as if such Closing Statement was being prepared as of a fiscal year end, as adjusted as set forth on Schedule B; *provided that* if Buyer does not deliver the Closing Statement within seventy-five (75) days after the Closing Date, then the Closing Statement shall be deemed to be the Estimated Closing Statement and the Purchase Price shall be deemed to be equal to the Closing Date Payment.

(ii) After the Closing, the adjustment to the Purchase Price shall be redetermined in the following manner:

(A) either (1) an increase by the amount, if any, by which the Closing Working Capital (as finally determined pursuant to Section 2.04(c)) is greater than the top of the range of the Target Working Capital, or (2) a decrease by the amount, if any, by which the Closing Working Capital is less than the bottom of the range of the Target Working Capital; *provided that*, in each case, in no event shall the absolute value of the adjustment to the Purchase Price attributable solely to the Closing Working Capital exceed Five Hundred Thousand Dollars ($500,000);

(B) a decrease by the Closing Indebtedness;

(C) a decrease by the amount of Closing Transaction Expenses; and

(D) a decrease by the amount of Credit for Referral Payments.

(iii) The post-closing adjustment shall be an amount equal to the Purchase Price (as finally determined pursuant to Section 2.04(c)) minus the Closing Date Payment (the "**Post-Closing Adjustment**").

(c) Examination and Review.

(i) Examination. After receipt of the Closing Statement, Seller shall have thirty (30) days (the "**Review Period**") to review the Closing Statement. During the Review Period, Seller and Seller's Accountants shall have access to the books and records of the Company Group, the personnel of, and work papers prepared by, Buyer and/or Buyer's Accountants to the extent that they relate to the Closing Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Statement as Seller may reasonably request for the purpose of reviewing the Closing Statement and to prepare a

Statement of Objections (defined below), *provided that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company Group.

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Closing Statement by delivering to Buyer a written statement setting forth Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for Seller's disagreement therewith (the "**Statement of Objections**"). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

(iii) Resolution of Disputes. If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of an impartial nationally recognized firm of independent certified public accountants other than Seller's Accountants or Buyer's Accountants (the " **Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Statement based on the parties' computations of the Closing Statement and any such work papers, schedules, or other documents and written information relating to the Closing Statement as the Independent Accountant may reasonably request. The Independent Accountant shall review those items in dispute in the Closing Statement and shall render a written report as to the resolution of each dispute and the Disputed Amounts and the resulting calculations of each item in the Closing Statement and base its determination solely on the information provided by the parties and the applicable definitions, procedures, and other terms in this Agreement and the presentations by Buyer and Seller. The parties hereto agree that all adjustments shall be made without regard to materiality. Absent manifest error, the Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts and their adjustments to the Closing Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) Payments of Post-Closing Adjustment. If the Post-Closing Adjustment is a positive amount, then Buyer shall pay Seller the Post-Closing Adjustment. If the Post-Closing Adjustment is a negative amount, then Seller shall pay Buyer the absolute value of the Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within five (5) Business Days after the acceptance (or deemed acceptance) of the applicable Closing Statement or (y) if there are Disputed Amounts, then within five (5) Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account as is directed by Buyer or Seller, as the case may be. The amount of any Post-Closing Adjustment shall bear interest from and including the Closing Date to and including the date of payment at a rate per annum equal to the prime rate published in the Wall Street Journal. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed.

(e) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.04 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.05 Closing. Subject to the terms and conditions of this Agreement, the purchase and sale of the Membership Interests and the Shares contemplated hereby shall take place at a closing (the "**Closing**") to be held at 12:00 p.m. EST, no later than three (3) Business Days after the last of the conditions to Closing set forth in Article VII have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), at the offices of Dentons Canada LLP, 77 King Street West, Suite 400, Toronto-Dominion Centre, Toronto, Ontario, Canada M5K 0A1 or remotely by exchange of documents and signatures (or their electronic counterparts), or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**").

Section 2.06 Withholding Tax. Buyer and the Company Group shall be entitled to deduct and withhold, and Buyer and the Company Group shall deduct and withhold, any amounts they are required to deduct and withhold pursuant to any provision of applicable Tax Law in connection with any payments required to be made by Buyer or the Company Group pursuant to the terms of this Agreement. To the extent that amounts are so withheld by Buyer or the Company Group, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person otherwise entitled to receive such payments pursuant to this Agreement. Buyer and Company Group will provide five (5) days written notice prior to the deduction or withholding any Tax in connection with any payments to, or on behalf of, Seller under this Agreement and Buyer and Company Group will use commercially reasonable efforts to cooperate with any reasonable request from Seller to avoid or minimize any Tax withholding from any payment made pursuant to this Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section or Subsection of the Disclosure Schedules, each of Seller and ExchangeCo represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date hereof and as of the Closing; *provided that* (a) the representations and warranties in this Article III shall only qualified by any exceptions or disclosures (i) set forth in the Section or Subsection of the Disclosure Schedules corresponding to the particular Section or Subsection in this Article III in which such representation and warranty appears, (ii) explicitly cross-referenced in such Section or Subsection of the Disclosure Schedules by reference to another Section or Subsection of the Disclosure Schedules, and (iii) set forth in any other Section or Subsection of the Disclosure Schedules to the extent it is readily apparent from the wording of such exception or disclosure that such exception or disclosure qualifies such representation and warranty; and (b) the inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgement, in and of itself, that such information is required by the terms hereof to be disclosed in the Disclosure Schedules or is material.

Section 3.01 Organization and Authority of Seller and ExchangeCo.

(a) Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware. Seller has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any Ancillary Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder, and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller; *provided that* the Required Seller's Stockholder Vote with respect to the Seller's Stockholder Matters is the only vote of the holders of any class or series of Seller's capital stock necessary to approve the Seller's Stockholder Matters. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each Ancillary Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(b) ExchangeCo is a corporation duly organized, validly existing and in good standing under the Laws of the province of Ontario. ExchangeCo has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which ExchangeCo is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by ExchangeCo of this Agreement and any Ancillary Document to which ExchangeCo is a party, the performance by ExchangeCo of its obligations hereunder and thereunder, and the consummation by ExchangeCo of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of ExchangeCo. This Agreement has been duly executed and delivered by ExchangeCo, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of ExchangeCo enforceable against ExchangeCo in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each Ancillary Document to which ExchangeCo is or will be a party has been duly executed and delivered by ExchangeCo (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of ExchangeCo enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization moratorium, or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.02 Organization, Authority and Qualification of AO and MJF.

(a) AO is a corporation duly organized, validly existing and in good standing under the Laws of the province of Ontario and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02(a) of the Disclosure Schedules sets forth each jurisdiction in which AO is licensed or qualified to do business, and AO is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified, or in good standing would not have a Material Adverse Effect. All corporate actions taken by AO in connection with this Agreement and the Ancillary Documents will be duly authorized by all requisite corporate action of the part of AO on or prior to the Closing.

(b) MJF is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Colorado and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02(b) of the Disclosure Schedules sets forth each jurisdiction in which MJF is licensed or qualified to do business, and MJF is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified, or in good standing would not have a Material Adverse Effect. All limited liability company actions taken by MJF in connection with this Agreement and the Ancillary Documents will be duly authorized by all requisite corporate action of the part of MJF on or prior to the Closing.

Section 3.03 Capitalization.

(a) AO.

(i) ExchangeCo is the sole owner of, and has good and valid title to, the Shares, free and clear of all Encumbrances (other than Permitted Encumbrances). The Shares constitute 100% of the total issued and outstanding shares in AO and other than the Shares there are no other issued and outstanding equity interests in AO. The Shares have been duly authorized and are validly issued, fully paid and non-assessable. Immediately following the consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Shares, free and clear of all Encumbrances (other than Encumbrances pursuant to securities Laws of general application).

(ii) The Shares were issued in compliance with applicable Laws. None of the Shares were issued in violation of the Organizational Documents of AO or any other agreement, arrangement or commitment to which Seller, ExchangeCo or AO is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(iii) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to any shares or other equity interests in AO or obligating Seller, ExchangeCo or AO to issue or sell any shares or other equity interests (including the Shares) of, or any other interest in, AO. AO does not have outstanding or authorized any equity appreciation, phantom equity, profit participation or similar rights. Other than the Organizational Documents of AO, there are no voting trusts, member agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

(b) MJF.

(i) Seller is the sole owner of, and has good and valid title to, the Membership Interests, free and clear of all Encumbrances (other than Permitted Encumbrances). The Membership Interests constitute 100% of the total issued and outstanding membership interests in MJF and other than the Membership Interests there are no other issued and outstanding equity interests in MJF. The Membership Interests have been duly authorized and are validly issued, fully

paid and non-assessable. Immediately following the consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Membership Interests, free and clear of all Encumbrances (other than Encumbrances pursuant to securities Laws of general application).

(ii) The Membership Interests were issued in compliance with applicable Laws. None of the Membership Interests were issued in violation of the Organizational Documents of MJF or any other agreement, arrangement or commitment to which Seller or MJF is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(iii) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the any membership interests or other equity interests in MJF or obligating Seller or MJF to issue or sell any membership interests (including the Membership Interests) of, or any other interest in, MJF. MJF does not have outstanding or authorized any equity appreciation, phantom equity, profit participation or similar rights. Other than the Organizational Documents of MJF, there are no voting trusts, member agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Membership Interests.

Section 3.04 Subsidiaries.

(a) Section 3.04(a) of the Disclosure Schedules sets forth (i) the name of each Company Group member (other than AO or MJF), (ii) such Company Group member's jurisdiction of organization or incorporation, (iii) such Company Group member's authorized and outstanding equity interests, and (iv) the name(s) of the owner(s) of such Company Group member's outstanding equity interests. All of the equity interests of such Company Group member have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by AO or MJF, free and clear of all Encumbrances (other than Permitted Encumbrances). All of the equity interests of such Company Group member were issued in compliance with applicable Laws. None of the equity interests of such Company Group member were issued in violation of any agreement, arrangement or commitment to which Seller, ExchangeCo or any Company Group member is a party or is subject to or in violation of any preemptive or similar rights of any Person. There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to equity interests of such Company Group member or obligating Seller, ExchangeCo or any Company Group member to issue or sell any equity interests of, or any other interest in, such Company Group member. Such Company Group member does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights. There are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the equity interests of such Company Group member.

(b) Each Company Group member is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.04(b) of the Disclosure Schedules sets forth each jurisdiction in which such Company Group member is licensed or qualified to do business, and such Company Group member is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so licensed, qualified, or in good standing would not have a Material Adverse Effect.

(c) The Company Group does not own, or have any interest in any shares or have an ownership interest in any Person other than a Company Group member. There are no Contracts to which any Company Group member is a party or bound with respect to the voting (including voting trusts or proxies) of the ownership interests of any other entity. No Company Group member owns or has any rights to acquire, directly or indirectly, any ownership interests of, or otherwise control, any Person other than a Company Group member. No Company Group member is a participant in any joint venture, partnership or similar arrangement. There are no outstanding contractual obligations of any Company Group member to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person.

Section 3.05 No Conflicts; Consents. The execution, delivery and performance by each of Seller and ExchangeCo of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) result in a violation or breach of, or default under, any provision of the Organizational Documents of Seller, ExchangeCo or any Company Group member; (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, ExchangeCo or any Company Group member; (c) except as set forth in Section 3.05 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, or result in the acceleration of or create in any party the right to accelerate, terminate, modify, or cancel any Contract to which Seller, ExchangeCo or any Company Group member is a party or by which Seller, ExchangeCo or any Company Group member is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets, or business of any Company Group member; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of any Company Group member. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller, ExchangeCo or any Company Group member in connection with the execution and delivery of this Agreement and the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 3.06 Financial Statements. Complete copies of each of AO Group's and MJF Group's audited or unaudited, as applicable, consolidated financial statements consisting of the balance sheet of AO Group or MJF Group, respectively, as at December 31 in each of the years 2021, 2020 and 2019 and the related statements of income and retained earnings, members' equity and cash flow for the years then ended (collectively, the "**Annual Financial Statements**"), and unaudited consolidated financial statements consisting of the balance sheet of AO Group or MJF Group, respectively, as at September 30, 2022 and the related statements of income and retained earnings, members' equity and cash flow for the nine-month period then ended (collectively, the "**Interim Financial Statements**" and together with the Annual Financial Statements, the "**Financial Statements**") have been delivered to Buyer. The Financial Statements have been prepared in accordance with GAAP in all material respects applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Annual Financial Statements). The Financial Statements are based on the books and records of AO Group or MJF Group, respectively, and fairly present in all material respects the financial condition of AO Group or MJF Group, respectively, as of the respective dates they were prepared and the results of the operations of AO Group or MJF Group, respectively, for the periods indicated. The balance sheet of each of AO Group and MJF Group as of December 31, 2021 is collectively referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of each of AO Group and MJF Group as of September 30, 2022 is collectively referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". Each of AO Group and MJF Group maintains a standard system of accounting established and administered in accordance with GAAP in all material respects.

Section 3.07 Undisclosed Liabilities. The Company Group has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Interim Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date, which are not, individually or in the aggregate, material in amount, and (c) those that are executory obligations expressly provided for under existing Contracts of the Company Group that have not arisen from a breach thereof or thereunder and that are not required to be reflected on a balance sheet prepared in accordance with GAAP.

Section 3.08 Absence of Certain Changes, Events, and Conditions. Except as expressly contemplated by this Agreement or as set forth in Section 3.08 of the Disclosure Schedules, since the Interim Balance Sheet Date, the business of the Company Group has been conducted in the ordinary course of business consistent with past practice, and there has not been, with respect to the Company Group, any:

(a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) amendment of the Organizational Documents of any Company Group member;

(c) split, combination or reclassification of any shares, membership interests or other equity interests of any Company Group member;

(d) issuance, sale or other disposition of, or creation of any Encumbrance on, any shares, membership interests or other equity interests of any Company Group member, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any shares, membership interests or other equity interests of any Company Group member;

(e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock or redemption, purchase or acquisition of its capital stock;

(f) material change in any method of accounting or accounting practice of any Company Group member, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) material change in the Company Group's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(h) entry into any Contract that would constitute a Material Contract;

(i) incurrence, assumption or guarantee of any indebtedness for borrowed money in an aggregate amount exceeding $10,000, except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements;

(k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Company IP Agreements except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice;

(l) abandonment or lapse of or failure to maintain in full force and effect any material Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any material Trade Secrets included in the Company Intellectual Property;

(m) material damage, destruction or loss (whether or not covered by insurance) to its property;

(n) any capital investment in, or any loan to, any other Person;

(o) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company Group is a party or by which it is bound;

(p) any material capital expenditures;

(q) imposition of any Encumbrance upon any of the Company Group's properties, equity interests or assets, tangible or intangible;

(r) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, managers, independent contractors or consultants, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed $50,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, manager, independent contractor or consultant;

(s) hiring or promoting any person as or to (as the case may be) an officer (or equivalent) level or, except to fill a vacancy in the ordinary course of business, hiring or promoting any employee below director (or equivalent) level;

(t) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, manager, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(u) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders, members or current or former directors, managers, officers and employees;

(v) entry into a new line of business or abandonment or discontinuance of existing lines of business;

(w) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of $5,000, individually (in the case of a lease, per annum) or $10,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;

(y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets, stock or other equity of, or by any other manner, any business or any Person or any division thereof;

(z) action by the Company Group to (i) make, change or rescind any Tax election, (ii) file any amendment to any Tax Return with respect to any Taxes, (iii) settle or compromise any Tax Liability, audit or other Action related to Taxes, (iv) agree to any extension or waiver of the statute of limitations with respect to the assessment or determination of Taxes, (v) file any voluntary Tax disclosure, amnesty or similar filing, (vi) enter into any closing agreement with respect to Taxes, (vii) enter into a Tax Sharing Agreement or (viii) surrender any right to claim a material Tax refund, in each case that would have the effect of increasing the Tax Liability or reducing any Tax asset of Buyer in respect of a taxable period (or portion there) beginning after the Closing Date; or

(aa) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 3.09 Material Contracts.

(a) Section 3.09(a) of the Disclosure Schedules lists each of the following Contracts of the Company Group (such Contracts listed, or which should be listed, together with all Contracts concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or disclosed, or which should be listed or disclosed, in Section 3.10(b) of the Disclosure Schedules and all Company IP Agreements listed or disclosed, or which should be listed or disclosed, in Section 3.12(b) of the Disclosure Schedules, being "**Material Contracts**"):

(i) each Contract of the Company Group (A) involving aggregate consideration in excess of $50,000 and which, in each case, cannot be cancelled by the Company Group without penalty or without more than sixty (60) days' notice or (B) with a customer of the Company Group;

(ii) all Contracts that require the Company Group to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(iii) all Contracts that provide for the indemnification by the Company Group of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of equity or assets of a Company Group member or any other Person or any real property (whether by merger, sale of stock or other equity interests, sale of assets or otherwise);

(v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company Group is a party and which are not cancellable without material penalty or without more than sixty (60) days' notice, in each case involving amounts in excess of $50,000;

(vii) except for Contracts relating to trade payables, all Contracts relating to indebtedness (including, without limitation, guarantees) of the Company Group;

(viii) all Contracts with any Governmental Authority to which the Company Group is a party ("**Government Contracts**");

(ix) all Contracts that limit or purport to limit the ability of the Company Group to compete in any line of business or with any Person or in any geographic area or during any period of time;

(x) any Contracts that provide for any joint venture, partnership or similar arrangement by the Company Group;

(xi) all Contracts between or among the Company Group on the one hand and Seller, ExchangeCo or any Affiliate of Seller or ExchangeCo (other than the Company Group) on the other hand;

(xii) all collective bargaining agreements, labor contracts, letters of understanding, letters of intent, voluntary recognition agreements or Contracts or legally binding commitments with any Union;

(xiii) all Contracts relating to Licensed Intellectual Property; and

(xiv) any other Contract that is material to the Company Group and not previously disclosed pursuant to this Section 3.09.

(b) Except as set forth in Section 3.09(b) of the Disclosure Schedules, each Material Contract is valid and binding on the applicable Company Group member in accordance with its terms and is in full force and effect. None of the Company Group or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

Section 3.10 Title to Assets; Real Property.

(a) The Company Group has good and valid (and, in the case of owned Real Property, good and marketable fee simple) title to, or a valid leasehold interest in,

all Real Property and tangible personal property and other assets (tangible or intangible) reflected in the Annual Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) those items set forth in Section 3.10(a) of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable;

(iii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent or the subject of dispute and which are not, individually or in the aggregate, material to the business of the Company Group;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company Group; or

(v) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company Group.

(b) Section 3.10(b) of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company Group, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; (iii) the current use of such property; and (iv) the Company Group member that leases or subleases such parcel of Real Property. The Company Group does not own any Real Property. Seller has delivered or made available to Buyer true, complete and correct copies of any leases affecting the Real Property. The Company Group is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. With respect to Real Property leased to or by the Company Group, Seller has delivered or made available to Buyer true, complete and correct copies of any leases or subleases affecting the Real Property. The use and operation of the Real Property in the conduct of the Company Group's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company Group. There are no Actions pending nor, to Seller's Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

Section 3.11 Condition and Sufficiency of Assets.

(a) Except as set forth in Section 3.11 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company Group are structurally sound, are in good operating condition and repair (ordinary wear and tear excepted), and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(b) The buildings, plants, structures, furniture, fixtures, machinery, equipment, leasehold improvements, vehicles, parts and other items of tangible personal property currently owned or leased by the Company Group, together with all other properties and assets of the Company Group, are sufficient for the continued conduct of the Company Group's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the business of the Company Group as currently conducted, and no other rights, properties or assets are required or necessary, or will be required or necessary, to operate the business of the Company Group as it is currently conducted.

Section 3.12 Intellectual Property.

(a) Section 3.12(a) of the Disclosure Schedules contains a correct, current, and complete list of: (i) all Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the patent, registration, or application serial number; the issue, registration, or filing date; and the current status; (ii) all material unregistered Trademarks included in the Company Intellectual Property; (iii) all proprietary software of the Company Group; and (iv) all other material Company Intellectual Property used or held for use in the Company Group's business as currently conducted and as proposed to be conducted.

(b) Section 3.12(b) of the Disclosure Schedules contains a correct, current, and complete list of all Company IP Agreements, specifying for each the date, title, and parties thereto, and separately identifying the Company IP Agreements: (i) under which the Company Group is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property, excluding standard, non-exclusive end-user license agreements related to any proprietary software of the Company Group for which the Company Group has disclosed the form license agreement to Buyer; (ii) under which the Company Group is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person, excluding licenses for Off-the-Shelf Software; and (iii) which otherwise relate to the Company Group's ownership or use of Intellectual Property, in each case identifying the Intellectual Property covered by such Company IP Agreement. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Company IP Agreement is valid and binding on the Company Group in accordance with its terms and is in full force and effect. Neither the Company Group nor, to Seller's Knowledge, any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Company IP Agreement.

(c) The Company Group is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and has the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Company Group's business as currently conducted and as proposed to be conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. All Intellectual Property created, invented, or developed by any current or former employee, consultant or independent contractor of the Company Group during the course of employment or engagement by the Company Group has been validly and fully assigned and transferred solely to the Company Group or is owned solely by the Company Group by operation of law, and no current or former shareholder, member, officer, directly, manager, employee, consultant, or contractor of the Company Group has any right, title, or interest in any Company Intellectual Property. The Company Group has entered into a binding, valid, and enforceable written Contract with each current or former consultant or independent contractor who created, invented, or developed any material Intellectual Property on

behalf of the Company Group whereby such independent contractor fully transfers all ownership of such Intellectual Property solely to the Company Group. Seller has provided Buyer with true and complete copies of all such written Contracts. All assignments and other instruments necessary to establish, record, and perfect the Company Group's ownership interest in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person in respect of, the Company Group's right to own or use any Company Intellectual Property or Licensed Intellectual Property.

(e) All of the Company Intellectual Property are valid and enforceable, and all Company IP Registrations are subsisting and in full force and effect. The Company Group has taken all reasonable and necessary steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Company Intellectual Property, including by requiring all Persons having access to the Trade Secrets to execute binding, written non-disclosure agreements. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars. Seller has provided Buyer with true and complete copies of all file histories, documents, certificates, office actions, correspondence, assignments, and other instruments relating to the Company IP Registrations.

(f) The conduct of the Company Group's business as currently and formerly conducted and as proposed to be conducted, including the use of the Company Intellectual Property and Licensed Intellectual Property in connection therewith, and the products, processes and services of the Company Group, have not infringed, misappropriated or otherwise violated, and will not infringe, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. To Seller's Knowledge, no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property or Licensed Intellectual Property.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending, or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company Group of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Company Intellectual Property or the use by the Company Group of any Licensed Intellectual Property or the Company Group's right, title, or interest in or to any Company Intellectual Property or Licensed Intellectual Property; or (iii) by the Company Group or, to Seller's Knowledge, by the owner of any Licensed Intellectual Property alleging any infringement, misappropriation, or other violation by any Person of the Company Intellectual Property or any Licensed Intellectual Property. There are no facts or circumstances that could reasonably be expected to give rise to any such Action. The Company Group is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Company Intellectual Property or Licensed Intellectual Property.

(h) Section 3.12(h) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used in the Company Group's business. The Company Group has complied with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to its use of any social media platforms, sites, or services (collectively, "**Platform Agreements**"). There are no actions, whether settled, pending, or threatened, alleging any (A) breach or other violation of any Platform Agreement by the Company Group; or (B) defamation, violation of publicity rights of any Person, or any other violation by the Company Group in connection with its use of social media.

(i) All Company IT Systems are in good working condition and are sufficient for the operation of the Company Group's business as currently conducted and as proposed to be conducted. There has been no malfunction, failure, continued substandard performance, denial-of-service or other cyber incident (including any cyberattack), or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in disruption or damage to the business of the Company Group. The Company Group has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and software and hardware support arrangements.

(j) The Company Group has complied with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Company Group's business. The Company Group has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company Group's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

Section 3.13 Inventory. All inventory of the Company Group, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company Group free and clear of all Encumbrances (other than Permitted Encumbrances), and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company Group.

Section 3.14 Accounts Receivable. The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company Group involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of the Company Group not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company Group, are collectible. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company Group have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 3.15 Customers and Suppliers.

(a) Section 3.15(a) of the Disclosure Schedules sets forth (i) each customer who has paid aggregate consideration to the Company Group for goods or services rendered in an amount greater than or equal to $10,000 for each of the two most recent fiscal years who has not ceased to use the Company Group's goods or services or otherwise terminated its relationship with the Company Group prior to the date of this Agreement (collectively, the "**Material Customers**") (ii) the amount of consideration paid by each Material Customer during such periods, and (iii) each customer who has paid aggregate consideration to the Company Group for goods or services rendered in an amount greater than or equal to $10,000 for each of the two most recent fiscal years who has ceased to use the Company Group's goods or services or otherwise terminated its relationship with the Company Group since the Interim Balance Sheet Date. The Company Group has not received any notice, and

has no reason to believe, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company Group.

(b) Section 3.15(b) of the Disclosure Schedules sets forth (i) each supplier to whom the Company Group has paid consideration for goods or services rendered in an amount greater than or equal to $10,000 for each of the two most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. The Company Group has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company Group or to otherwise terminate or materially reduce its relationship with the Company Group.

(c) The consummation of the transactions contemplated by this Agreement or the Ancillary Documents will not materially affect the relationship of the Company Group with any Material Customer or Material Supplier.

Section 3.16 Government Contracts.

(a) Section 3.16(a) of the Disclosure Schedules sets forth a true and complete list of all Government Contracts for which payment or a final release has not yet been received, regardless of whether the period of performance has ended (collectively, the "**Current Government Contracts**").

(b) Section 3.16(b) of the Disclosure Schedules set forth a true and complete list of all Government Bids, including task or delivery order bids under the Company Group's or other Persons' current Government Contracts submitted by the Company Group and for which no award has been made, and with respect to each such Government Bid, Section 3.16(b) of the Disclosure Schedules accurately lists: (i) the customer agency, (ii) the request for proposal or solicitation number and, if such Government Bid is for a task or delivery order under a prime contract, the applicable prime contract number, (iii) the date of submission, (iv) the expected award date, (v) the estimated period of performance, and (vi) the estimated value based on the Government Bid, if any.

(c) The Company Group has made available to Buyer true and complete copies of all Current Government Contracts, including any amendments or modifications thereto, and all Government Bids and provided access to Buyer to true and correct copies of all material documentation related thereto requested by Buyer. All of the Current Government Contracts were legally awarded, are binding on the parties thereto, and are in full force and effect. The Current Government Contracts (or, where applicable, the prime Government Contracts under which the Current Government Contracts were awarded) are not currently the subject of bid or award protest Actions, and no such Current Government Contracts (or, where applicable, the prime Government Contracts under which the Current Government Contracts were awarded) are reasonably likely to become the subject of bid or award protest Actions.

(d) With respect to each Government Contract, there is no (i) pending investigation or audit by any Governmental Authority, including any administrative, civil or criminal investigation, (ii) suspension or debarment proceeding (or equivalent proceeding) pending against a Company Group member or any of its Affiliates (as defined in FAR 9.403), (iii) written or oral request by a Governmental Authority for a contract price adjustment based on a cost item that has been questioned or proposed for disallowance by an authorized contracting officer (or other applicable Governmental Authority) or a claim of defective pricing in excess of $10,000, (iv) dispute between a Company Group member and a Governmental Authority which has resulted in a government contracting officer's final decision where the amount in controversy exceeds or is expected to exceed $10,000, or (v) any written or oral claim or request for equitable adjustment by a Company Group member against a Governmental Authority in excess of $10,000. The Company Group's cost accounting system and procurement systems with respect to the Government Contracts and Government Bids are in compliance with applicable regulations and legal requirements, and the Company Group has not received notice from a Governmental Authority of a determination that the cost accounting systems of the Company Group are inadequate for accumulating and billing costs under Government Contracts.

(e) Except as set forth on Section 3.16(e) of the Disclosure Schedules, (i) the Company Group has complied in all respects with all statutory and regulatory requirements where and to the extent applicable, including the Service Contract Act, the Contract Disputes Act, the False Claims Act, the Federal Procurement and Administrative Services Act, the FAR, the Procurement Integrity Act and Cost Accounting Standards and any similar applicable state, local or foreign Laws, where and as applicable to each of the Government Contracts and Government Bids, and the Company Group has not received written or oral notice of any violation of such Laws; (ii) the representations, certifications, and warranties made by the Company Group with respect to the Government Contracts or Government Bids were accurate as of their effective date, and the Company Group has complied in all respects with all such representations, certifications and warranties; (iii) no Government Contract has been terminated for default, breach, cause or other failure to perform; and (iv) the Company Group has not received any adverse or negative past performance evaluations or ratings within the past three years. The Company Group has complied in all respects with all terms and conditions of each Government Contract, including all state, local or foreign Law or agency supplement clauses identified or incorporated by reference therein, and the Company Group has not received written or oral notice of any violation of any Government Contract, including any show cause, cure, deficiency, default or similar notice. No termination for default or convenience notice, cure notice, or show cause notice has been issued by any Governmental Authority, prime contractor or higher-tier subcontractor to the Company Group. Neither the Company Group, nor any of its directors, managers, officers or employees is, or for the last five years has been, debarred, proposed for debarment, suspended from or otherwise declared non-responsible or ineligible for participation in the award of contracts with any Governmental Authority. The Company Group possesses all facility and personnel security clearances and Permits necessary for the execution and performance of its obligations under the Government Contracts. The Company Group has not engaged in any activity that gave rise to an Organizational Conflict of Interest (as defined in FAR 9.501 or applicable agency FAR supplements or the Government Contracts or any comparable applicable state, local or foreign Law).

(f) As of the date hereof, the Company Group does not have any outstanding Government Bids that, if accepted or awarded, are expected to result in a Government Contract Loss to the Company Group, and the Company Group is not a party to any Current Government Contract that is expected to result in a Government Contract Loss to the Company Group. The Governmental Authority funding each Current Government Contract has allocated and appropriated funds for the full amount payable to the Company Group under such Current Government Contract. No Current Government Contract has incurred costs materially in excess of the total ceiling price, cost ceiling or funding ceiling of such Government Contract as amended.

Section 3.17 Export Control Laws. The Company Group is in compliance with all Export Control Laws applicable to it. Without limiting the foregoing: (a) the Company Group has obtained all export licenses and other material approvals required for its exports of products, computer software programs and technologies required by any Export Control Law and all such approvals and licenses are in full force and effect; (b) the Company Group is in compliance with the terms of such applicable export licenses or other approvals; and (c) there are no claims pending or threatened in writing against the Company Group with respect to such export licenses or other approval

Section 3.18 Certain Business Practices.

(a) Neither the Company Group nor any of its Representatives acting on its behalf has (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees, to foreign or domestic

political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977 or (iii) made any other unlawful payment. Neither the Company Group nor any of its Representatives acting on its behalf has directly or indirectly, given or agreed to give any unlawful gift or similar benefit in any material amount to any customer, supplier, governmental employee or other Person who is or may be in a position to help or hinder the Company Group or assist the Company Group in connection with any actual or proposed transaction.

(b) The operations of the Company Group are and have been conducted at all times in compliance with anti-money laundering Laws in all applicable jurisdictions issued, administered or enforced by any Governmental Authority in all material respects, and no Action involving the Company Group with respect to the any of the foregoing is pending or threatened.

(c) Neither the Company Group nor any of its directors, managers or officers, or any other Representative acting on behalf of the Company Group is currently identified on the specially designated nationals or other blocked person list or otherwise currently subject to any U.S. sanctions administered by OFAC, and the Company Group has not, directly or indirectly, used any funds, or loaned, contributed or otherwise made available such funds to any Subsidiary, joint venture partner or other Person, in connection with any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to, or otherwise in violation of, any U.S. sanctions administered by OFAC.

Section 3.19 Insurance. Section 3.19 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by Seller, ExchangeCo or their Affiliates (including the Company Group) and relating to the assets, business, operations, employees, officers, directors and managers of the Company Group (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Such Insurance Policies are in full force and effect and shall remain in full force and effect, and shall continue to provide coverage to and for the benefit of the Company Group, following the consummation of the transactions contemplated by this Agreement. Neither Seller, ExchangeCo nor any of their Affiliates (including the Company Group) has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based liability on the part of the Company Group. All such Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. There are no claims related to the business of the Company Group pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of Seller, ExchangeCo or any of their Affiliates (including the Company Group) is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company Group and are sufficient for compliance with all applicable Laws and Contracts to which the Company Group is a party or by which it is bound. With respect to each Insurance Policy, each of Seller and ExchangeCo has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate the transferability of same.

Section 3.20 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 3.20(a) of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened (a) against or by the Company Group affecting any of its properties or assets (or by or against Seller, ExchangeCo or any of their Affiliates and relating to the Company Group); or (b) against or by the Company Group, Seller, ExchangeCo or any Affiliate of Seller or ExchangeCo that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 3.20(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company Group or any of its properties or assets. The Company Group is in compliance with the terms of each Governmental Order set forth, or supposed to be set forth, in Section 3.20(b) of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 3.21 Compliance With Laws; Permits.

(a) The Company Group has complied, and is now complying, with all Laws applicable to it or its business, properties or assets.

(b) All Permits required for the Company Group to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.21(b) of the Disclosure Schedules lists all current Permits issued to the Company Group, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.21(b) of the Disclosure Schedules.

(c) None of the representations or warranties contained in this Section 3.21 shall be deemed to relate to environmental matters (which are governed by Section 3.22) or employment matters (which are governed by Section 3.24).

Section 3.22 Environmental Matters.

(a) The Company Group is currently and has been in compliance with all Environmental Laws and has not, and each of Seller and ExchangeCo has not, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) The Company Group has obtained and is in material compliance with all Environmental Permits (each of which is disclosed in Section 3.22(b) of the Disclosure Schedules) necessary for the ownership, lease, operation or use of the business or assets of the Company Group and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller or ExchangeCo, as applicable, through the Closing Date in accordance with Environmental Law, and neither Seller, ExchangeCo nor the Company Group is aware of any condition, event or circumstance that might prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of the Company Group as currently carried out. With respect to any such Environmental Permits, each of Seller and ExchangeCo has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate transferability of the same, and neither the Company Group, Seller nor ExchangeCo is aware of any condition, event or circumstance that might prevent or impede the transferability of the same, nor have they received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) No real property currently or formerly owned, operated or leased by the Company Group is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company Group or any real property currently or formerly owned, operated or leased by the Company Group, and neither the Company Group, Seller nor ExchangeCo has received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company Group (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material that would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Seller, ExchangeCo or the Company Group.

(e) Section 3.22(e) of the Disclosure Schedules contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by the Company Group.

(f) Section 3.22(f) of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company Group, Seller or ExchangeCo and any predecessors as to which the Company Group, Seller or ExchangeCo may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and neither Seller, ExchangeCo nor the Company Group has received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by the Company Group, Seller or ExchangeCo.

(g) Neither Seller, ExchangeCo nor the Company Group has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) Seller has provided or otherwise made available to Buyer and listed in Section 3.22(h) of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, economic models and other similar documents with respect to the business or assets of the Company Group or any currently or formerly owned, operated or leased real property which are in the possession or control of Seller, ExchangeCo or Company Group related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) Neither Seller, ExchangeCo nor the Company Group is aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the business or assets of the Company Group as currently carried out.

(j) Seller owns and controls all Environmental Attributes (a complete and accurate list of which is set forth in Section 3.22(j) of the Disclosure Schedules) and has not entered into any contract or pledge to transfer, lease, license, guarantee, sell, mortgage, pledge or otherwise dispose of or encumber any Environmental Attributes as of the date hereof. Neither Seller, ExchangeCo nor the Company Group is aware of any condition, event or circumstance that might prevent, impede or materially increase the costs associated with the transfer (if required) to Buyer of any Environmental Attributes after the Closing Date.

Section 3.23 Employee Benefit Matters.

(a) Section 3.23(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, savings, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, stock option, stock purchase, other equity, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, life insurance, Code Section 125 cafeteria, fringe benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, administered, contributed to, or required to be contributed to by the Company Group for the benefit of any current or former employee, officer, director, manager, retiree, independent contractor or consultant of the Company Group or any spouse, dependent or beneficiary of such individual, or under which the Company Group or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 3.23(a) of the Disclosure Schedules, collectively, each, a "**Benefit Plan**"). Seller has separately identified in Section 3.23(a) of the Disclosure Schedules (i) each Benefit Plan that contains a change in control provision and (ii) each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the Company Group primarily for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company Group, or any spouse, dependent or beneficiary of such individual, outside of the United States (a "**Non-U.S. Benefit Plan**").

(b) With respect to each Benefit Plan and Non-U.S. Benefit Plan, Seller has made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan or Non-U.S. Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan or Non-U.S. Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan or Non-U.S. Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports, financial statements related to any Benefit Plans or Non-U.S. Benefit Plans with respect to the two most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan or Non-U.S. Benefit Plan.

(c) Each Benefit Plan and Non-U.S. Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including

ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle or with respect to the initial adoption of such Qualified Benefit Plan, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Company Group or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

(d) No pension plan (other than a Multiemployer Plan) which is subject to minimum funding requirements, including any multiple employer plan, (each, a "**Single Employer Plan**") in which employees of the Company Group or any ERISA Affiliate participate or have participated has an "accumulated funding deficiency", whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No Single Employer Plan covering employees of the Company Group which is a defined benefit plan has an "adjusted funding target attainment percentage," as defined in Section 436 of the Code, less than 80%. All benefits, contributions and premiums relating to each Benefit Plan and Non-U.S. Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan or Non-U.S. Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP. All Non-U.S. Benefit Plans that are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions.

(e) Neither the Company Group nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan or Non-U.S. Benefit Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).

(f) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan, and (A) all contributions required to be paid by the Company Group or its ERISA Affiliates have been timely paid to the applicable Multiemployer Plan; (B) neither the Company Group nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied, and (C) a complete or partial withdrawal from any or all such Multiemployer Plans on the Closing Date would not result in any material liability to the Company Group and no Multiemployer Plan is in critical, endangered or seriously endangered status or has suffered a mass withdrawal; (ii) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iv) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA; and (v) no "reportable event," as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived has occurred with respect to any such plan.

(g) No Non-U.S. Benefit Plan is or is intended to be: (i) a "registered pension plan", (ii) a "deferred profit sharing plan", (iii) a "retirement compensation arrangement" or "salary deferral arrangement", (iv) a "registered retirement savings plan", (v) a "tax deferred savings plan" as such foregoing terms are defined in the Tax Act, (vi) an "employee life and health trust" as such terms are defined in Section 248(1) of the Tax Act, (vii) a retirement arrangement of any kind, or (viii) any self-insured or "administrative services only" employee welfare benefit plan. The Company Group does not sponsor, administer, participate in or contribute to, nor has ever sponsored, administered, participated in or contributed or required to contribute to a Benefit Plan or Non-U.S. Benefit Plan that is a "registered pension plan" as that term is defined under Section 248(1) of the Tax Act. The Company Group does not maintain, sponsor, administer, contribute to, or have any liability with respect to "multi-employer pension plan" as contemplated under applicable provincial pension benefits Law or "multi-employer plan" as defined under Section 8500(1) of the Income Tax Regulations (Canada). None of the Benefit Plans or Non-U.S. Benefit Plans is a "multi-employer pension plan" as contemplated under applicable provincial benefits Law or "multi-employer plan" as defined under Section 8500(1) of the Income Tax Regulations (Canada).

(h) Each Benefit Plan and Non-U.S. Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to Buyer, the Company Group or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. The Company Group has no commitment or obligation and has not made any representations to any employee, officer, director, manager, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan, Non-U.S. Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(i) Except as set forth in Section 3.23(i) of the Disclosure Schedules and other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan or Non-U.S. Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither the Company Group nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.

(j) Except as set forth in Section 3.23(j) of the Disclosure Schedules, there is no pending or, to Seller's Knowledge, threatened Action relating to a Benefit Plan or Non-U.S. Benefit Plan (other than routine claims for benefits), and no Benefit Plan or Non-U.S. Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(k) There has been no amendment to, announcement by Seller, ExchangeCo, the Company Group or any of their Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan, Non-U.S. Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a de minimis basis) with respect to any director, manager, officer, employee, independent contractor or consultant, as applicable. None of Seller, ExchangeCo, the Company Group, nor any of their Affiliates has any commitment or obligation or has made any representations to any director, manager, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan, Non-U.S. Benefit Plan or any collective bargaining agreement.

(l) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company Group does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code or any similar state law.

(m) Each individual who is classified by the Company Group as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan or Non-U.S. Benefit Plan.

(n) Except as set forth in Section 3.23(n) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, manager, officer, employee, independent contractor or consultant of the Company Group to severance pay, bonus, golden parachute, retirement or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation or benefit (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of the Company Group to merge, amend, or terminate any Benefit Plan or Non-U.S. Benefit Plan; (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan or Non-U.S. Benefit Plan; (v) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (vi) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code. Seller has made available to Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions.

(o) All employee data necessary to administer each Benefit Plan and Non-U.S. Benefit Plan is in the possession or control of the Company Group or an administrator or insurer with whom the Company Group has a services agreement or insurance contract, and is complete, correct and in a form which is sufficient for the lawful administration of each Benefit Plan and Non-U.S. Benefit Plan.

Section 3.24 Employment Matters.

(a) Section 3.24(a) of the Disclosure Schedules contains a complete and accurate list of all persons who are employees, independent contractors or consultants of the Company Group as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and employees in Canada that are on layoff and sets forth for each such individual the following: (i) name; (ii) title or position; (iii) employing entity; (iv) hire or retention date (or date of continuous service recognition); (v) total annual remuneration, including current annual base compensation rate or contract fee; (vi) commission, bonus or other incentive-based compensation (including the target and estimated amount of any commissions, bonuses or other incentive compensation); if applicable and (vii) a description of the fringe benefits provided to each such individual as of the date hereof, if any. For the independent contractors and consultants, Section 3.24(a) of the Disclosure Schedules includes the terms and conditions for termination, if required for the Company to terminate the relationship without cause. Except as set forth in Section 3.24(a) of the Disclosure Schedules, as of the date hereof, all compensation, including wages, vacation pay, sick pay, public holiday pay, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company Group for services performed on or prior to the date hereof have been paid in full (or accrued in full on the balance sheet that will be contained in the Closing Statement). To Seller's Knowledge, there are no outstanding agreements, understandings or commitments of the Company Group with respect to any compensation, commissions, bonuses, fees or other compensation other than those disclosed in Section 3.24(a) of the Disclosure Schedules. The Company Group has no employees outside of Canada.

(b) The Company Group has the right to terminate the employment of each employee in Canada upon providing the minimum amount of notice or pay in lieu of notice as required by the *Employment Standards Act*, 2000. The Company Group has the right to terminate the engagement of each independent contractor or consultant, immediately on written notice and without the requirement to pay severance or other separation benefits. To Seller's Knowledge, no employee, independent contractor or consultant has plans to terminate their employment or engagement with the Company.

(c) Except as set forth in Section 3.24(c) of the Disclosure Schedules, the Company Group is not party to or bound by any Contract in respect of any employee, independent contractor or consultant which provides such employee, independent contractor or consultant with a payment related to retention or upon a change of control.

(d) The Company Group is not, and has never been, a party to, bound by, or negotiating any collective bargaining agreement labour contract, letter of understanding, letter of intent, voluntary recognition agreement or Contract, or legally binding commitment or other Contract with a union, employee organization, employee representative body, works council or labor organization (collectively, "**Union**"), and there is not, and has never been, any Union representing, purporting to represent or applying to represent any employee of the Company Group, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining, including by way of certification, voluntary recognition, or successor rights. The Company Group is not party to, subject to, or affected by any certification order from a labour relations board. To the Seller's Knowledge, there are no threatened or pending organizing activities of any Union. There has never been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime, arbitrations, grievances, complaints, charges, unfair labour practice complaints or other similar labor disruptions, proceedings or disputes affecting the Company Group or any of its employees, and there have not been any such activities or disputes or proceedings within the last two (2) years. The Company Group has no duty to bargain with any Union.

(e) The Company Group is and has been in compliance with the terms of the Contracts listed, or that should be listed, on Section 3.24(d) of the Disclosure Schedules. The Company Group is and has been in compliance with all applicable Laws pertaining to labour, employment and employment practices, including all Laws relating to labor relations, employment standards legislation (where applicable), occupational health and safety, equal employment opportunities, human rights, pay equity, fair employment practices, employment discrimination, workplace violence and harassment, retaliation, accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, workplace safety and insurance, leaves of absence, paid sick leave and employment insurance. All individuals characterized and treated by the Company Group as independent contractors or consultants are properly treated as independent contractors under all applicable Laws and the Company Group has not received any notice from any Governmental Authority disputing such treatment. All employees of the Company Group classified as overtime exempt under the Fair Labor Standards Act and state and local wage and hour laws or the applicable provincial employment standards legislation are properly classified. The Company Group is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in Section 3.24(e) of the Disclosure Schedules, there are no audits, investigations, proceedings, orders writs, injunctions, decrees, or Actions against the Company Group or any employee, former employee, director or former director of the Company Group involving the Company Group outstanding, pending, or to Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Company Group, including, without limitation, any charge, investigation, lawsuit or claim relating to unfair labor practices, employment standards, occupational health and safety, pay equity, human rights, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, workplace safety and insurance, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(f) The Company Group has complied in all material respects with the WARN Act and all applicable Laws governing mass terminations, group terminations, collective terminations or other similar concepts, and it has no plans to undertake any action that would trigger the WARN Act or such applicable Laws.

(g) There are no outstanding, pending, and in the past two (2) years there have not been, any allegations against any current or former employee, independent contractor, or consultant of, and, to Seller's Knowledge, no current or former employee, independent contract or consultant has engaged in, harassment, sexual harassment, discrimination or similar misconduct of any nature, or breach of any policy of the Company Group relating to the foregoing, or any other similar act, whether or not unlawful nor is any such allegation pending or threatened or has any such allegation been investigated, settled or subject to an out-of-court or pre-litigation arrangement or the subject of any claim, litigation, proceeding or Action against or involving the Company Group and/or such person and, to Seller's Knowledge, none is reasonably anticipated.

(h) With respect to each Government Contract, the Company Group is and has been in compliance in all material respects with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("**Section 503**") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("**VEVRAA**"), including all implementing regulations. The Company Group maintains and complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. The Company Group has not been the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 or VEVRAA. The Company Group has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor. The Company Group is in compliance with and has complied with all immigration laws, including any applicable mandatory E-Verify obligations.

(i) Except as set forth in Section 3.24(i) of the Disclosure Schedules, to Seller's Knowledge, no current or former employee, independent contractor or consultant has breached, in the past five years, or is currently in breach of, the applicable Contract, including any restrictive covenant owed to the Company Group, or Seller's Knowledge any third party, including without limitation any non-disclosure, non-disparagement, non-solicitation, or non-competition obligation.

(j) The Company Group has not applied for, or received any business support measures or government programs (including without limitation any supplemental employment plan or wage subsidy program) with any Governmental Authority as a result of the COVID-19 pandemic.

(k) Each employee of the Company Group is authorized to work in the country in which they work, and has all required work permits and authorizations. The Company Group have all documentation relating to such authorizations to work as is required by applicable Laws.

Section 3.25 Taxes. Except as set forth in Section 3.25 of the Disclosure Schedules:

(a) Each member of the Company Group has timely filed with the appropriate Governmental Authority, or has caused to be timely filed on its behalf (taking into account any extension of time within which to file), all income and other material Tax Returns required by Law to be filed by it, and all such filed Tax Returns were prepared in compliance with applicable Law and are true, correct and complete in all material respects, and all Taxes payable by or on behalf of the Company Group have been timely paid. No member of the Company Group is the beneficiary of an extension of time within which to file any Tax Return.

(b) Each member of the Company Group has paid in full and when due all Taxes required to be paid by it, including all instalments on account of Taxes, whether or not such Taxes are shown on a Tax Return or assessed or reassessed by a Governmental Authority.

(c) The amount of the Company Group's Liability for unpaid Taxes for all periods ending on or before the Interim Balance Sheet Date does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company Group's Liability for unpaid Taxes for all periods following the end of the most recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the applicable Company Group (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(d) There are no Liens for Taxes upon the assets of the Company Group (except where such Lien arises as a matter of law prior to the due date for paying the related Taxes).

(e) No audits, investigations or other administrative proceedings or court proceedings are presently pending, or to the Knowledge of Seller or any Affiliate thereof have been threatened or proposed, in each case with regard to Taxes of any member of the Company Group.

(f) Each Company Group member has complied in all respects with all applicable Laws relating to the payment and withholding of Taxes and has properly and timely withheld all Taxes required to be withheld by such member in connection with amounts paid or owing to any employee, former employee, independent contractor, creditor, shareholder, member, Affiliate, customer, supplier, officer, director, non-resident Person or other Person. Each Company Group member has properly and timely paid all such withheld Taxes to the appropriate Governmental Authority or has properly set aside such withheld amounts in accounts for such purpose. Each Company Group member has duly and timely complied with all registration requirements in respect of all Tax Laws pertaining to sales or transfer Taxes, including applicable GST/HST, has collected all such Taxes required to be collected, and has remitted, or will remit on a timely basis, such amounts to the appropriate Governmental Authority, or has been furnished properly completed exemption certificates and has maintained all such records and supporting documents in the manner required by all applicable sales and use Tax statutes and regulations including the *Excise Tax Act* (Canada). The GST/HST registration number for each Company Group member is set forth in Section 3.25(f) of the Disclosure Schedules.

(g) There are no outstanding agreements or waivers executed or filed by any Company Group member extending the statutory period of limitations applicable to any claim for any Taxes due from the Company Group (except for automatic extensions of time to file income Tax Returns obtained in the ordinary course of business) and no such waiver or extension has been requested in writing from any Governmental Authority, in each case, which is still in effect.

(h) Each member of the MJF Group has been treated as a disregarded entity for U.S. federal, state and local income tax purposes since its formation.

(i) No member of the Company Group is or has been a party to or bound by any Tax Sharing Agreement.

(j) Each Company Group member has never been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes (other than the Seller Group). Each Company Group member does not have any Liability for the Taxes of any Person (other than the Company Group) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract or otherwise, in each case, other than commercial agreements entered into in the ordinary course of business, the principle purpose of which is not Tax.

(k) Each Company Group member is not, and has not been, a party to a "reportable transaction" within the meaning of Section 6707A of the Code and Treasury Regulation Section 1.6011-4(b).

(l) Each Company Group member will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:

(i) any change in method of accounting under Section 481 of the Code (or any comparable provision of state, local or non-U.S. Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;

(ii) an installment sale or open transaction occurring on or prior to the Closing Date;

(iii) a prepaid amount received or deferred revenue accrued on or prior to the Closing Date;

(iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or non-U.S. law, executed prior to the Closing;

(v) the application of Section 965 of the Code, including as a result of any election under Section 965(h) of the Code with respect thereto;

(vi) intercompany transaction or excess loss account described in the Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of Law); or

(vii) an inclusion pursuant to Section 951 or Section 951A of the Code with respect to income earned or accrued in a Pre-Closing Tax Period.

(m) No claim has been made in writing by any taxing authority in any jurisdiction where any Company Group member does not file Tax Returns that it is, or may be, subject to Tax by, or required to file any Tax Return in, that jurisdiction.

(n) No Company Group member (i) is or was treated for any Tax purposes as a resident in a country other than the country of its incorporation; (ii) has or had any trade or business, branch, agency or permanent establishment (within the meaning of an applicable Tax treaty) or other taxable presence (as determined pursuant to an applicable Tax treaty or Law) in any country other than the country of its formation or is considered to be a branch, branch or permanent establishment (within the meaning of an applicable Tax treaty) of an entity resident in a country other than the Company Group's country of incorporation, or (iii) otherwise become subject to the Tax jurisdiction of a country other than the country of its formation. Each Company Group member has not entered into a gain recognition agreement pursuant to Treasury Regulation Section 1.367(a)-8. Each Company Group member has not transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code.

(o) During the past two (2) years, no Company Group member has constituted a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify under Section 355 or Section 361 of the Code. No Company Group member has any Liability under Section 965(h) of the Code.

(p) No private letter rulings, technical advice memoranda or similar rulings have been requested by or with respect to the Company Group, or entered into or issued by any taxing authority with respect to the Company Group.

(q) Seller has made available to Buyer in Seller's electronic data room copies of (i) the portion of Seller's or ExchangeCo's federal Tax Returns relating to the Company Group for taxable periods since December 31, 2017, (ii) any state, local or non-U.S. Tax Returns of the Company Group since December 31, 2017 and (iii) any audit report or statement of deficiencies assessed against, agreed to by, or with respect to the Company Group for all Tax periods ending after December 31, 2015.

(r) Each Company Group member is not a party to any joint venture, partnership or other agreement, contract or arrangement (whether in writing or verbally) which could be treated as a partnership for federal income tax purposes.

(s) No Company Group member that is or was organized or formed in a non-U.S. jurisdiction (i) has, or at any time has had, an investment in "United States Property" within the meaning of Section 956(c) of the Code, (ii) is an "expatriated entity" within the meaning of Section 7874 of the Code or (iii) is or has been a "deferred foreign income corporation" within the meaning of Section 965(d) of the Code.

(t) Each Company Group member is in compliance in all material respects with all applicable transfer pricing Laws and regulations. No item will be required to be included in the gross income of a Company Group member pursuant to Section 451(b)(1)(A) of the Code earlier than the time such item would otherwise be required to be included for U.S. federal income tax purposes in the absence of Section 451(b)(1)(A) of the Code. For all transactions between the Company Group members, on the one hand, and any Person not resident in Canada for purposes of the Tax Act, on the other hand, with whom such member was not dealing at arm's length, such member has made or obtained records or documents that meet the requirements of paragraphs 247(4)(a) to (c) of the Tax Act. There are no transactions to which subsections 247(2) or (3) of the Tax Act may reasonably be expected to apply.

(u) The Company Group has not applied for or received loans or payments under Covid Relief (or any comparable, analogous or similar provision of Law), including pursuant to the Paycheck Protection Program, the Economic Injury Disaster Loan Program, the Canada Emergency Wage Subsidy, or the Canada Emergency Rent Subsidy, claimed any tax credits under Covid Relief (or any comparable, analogous or similar provision of Law), or has any COVID Related Deferrals, and, in any case, none of the foregoing actions are reasonably anticipated. No Company Group member has received written notice of the repeal, cancellation or revocation of any

such income Tax exemptions or preferential income Tax treatments.

(v) There are no transactions or events that have resulted in, and no circumstances existing, which could result in, the application to any member of the Company Group of any of sections 78, 80, 80.01, 80.02, 80.03 or 80.04 of the Tax Act or any analogous provision of any comparable Tax Laws of any jurisdiction.

(w) None of the Company Group members have acquired property or services from or disposed of property or provided services to, a Person with whom it does not deal at arm's length (for purposes of the Tax Act) for an amount that is other than the fair market value of such property or services, and has not been deemed to have done so for purposes of any Tax Laws, in circumstances that could give rise to liability for such member pursuant to section 160 of the Tax Act or any equivalent Tax Laws.

(x) None of the Securities is "taxable Canadian property" within the meaning of the Tax Act. None of the Securities derives, and none of them has at any time within the past 60 months derived, more than 50% of its fair market value directly or indirectly from or from any combination of (i) real or immovable property situated in Canada, (ii) Canadian resource properties (as defined in the Tax Act), (iii) timber resource properties (as defined in the Tax Act), and (iv) options in respect of, or interests in, or for civil law, a right in, property described in any of (i) to (iii), whether or not the property exists.

(y) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(z) Notwithstanding anything to the contrary in this Agreement, no representations or warranties are intended or made with respect to the existence, amount, usability, or limitations on usage of the Tax attributes of the Company Group, including net operating losses, capital loss carryforwards, foreign Tax credit carryforwards, asset bases, research and development credits, and depreciation periods, for Tax periods (or portions thereof) beginning on and after the Closing Date.

Section 3.26 Books and Records. The minute books and record books of the Company Group, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with sound business practices in all material respects. The minute books of the Company Group contain accurate and complete records of all meetings, and actions taken by written consent of, the stockholders, the members, the board of directors, managers, and any committees of the board of directors, the managers and any committees of the managers of each Company Group member, and no meeting, or action taken by written consent, of any such stockholders, members, board of directors or committee, or managers or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company Group.

Section 3.27 Brokers. Except for JMP Securities, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Seller, ExchangeCo or the Company Group.

Section 3.28 Solvency. Each of Seller and ExchangeCo is not entering into the transactions contemplated by this Agreement or the Ancillary Documents with the intent to hinder, delay or defraud either present or future creditors of Seller or ExchangeCo, any Subsidiary of Seller or ExchangeCo, the Company Group, any Subsidiary of the Company Group, or any other Person. After giving effect to all of the transactions contemplated by this Agreement and the Ancillary Documents, the Form S-4 Registration Statement and the Proxy Statement / Prospectus contained therein, including (i) the transactions (the "**Merger Transaction**") contemplated under that certain merger agreement by and between Seller, Gryphon and a wholly owned subsidiary of Seller, dated on or about the date of this Agreement (the " **Merger Agreement**"), (ii) any repayment, refinancing or conversion of debt contemplated by Seller, ExchangeCo or any Subsidiary of Seller or ExchangeCo in connection with the Merger Transaction or otherwise, (iii) the payment of all other amounts required to be paid in connection with the consummation of the transactions contemplated by this Agreement, the Ancillary Documents, the Form S-4 Registration Statement, the Proxy Statement / Prospectus, or Merger Transaction, and (iv) the payment of all related fees and expenses, at and immediately after the Closing and the closing of the Merger Transaction, each of Seller, ExchangeCo and their Subsidiaries will be Solvent. For purposes of Section 3.28:

(a) The term "**Solvent**" when used with respect to any Person, means that, as of any date of determination: (i) the Fair Value and Present Fair Salable Value of the assets of such Person exceed such Person's Stated Liabilities and Identified Contingent Liabilities; (ii) such Person does not have Unreasonably Small Capital; and (iii) such Person will be able to pay such Person's Stated Liabilities and Identified Contingent Liabilities as they mature.

(b) "**Fair Value**" means the amount at which the assets (both tangible and intangible) of a Person would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

(c) "**Present Fair Salable Value**" means the amount that could be obtained by an independent willing seller from an independent willing buyer if the assets of a Person are sold with reasonable promptness in an arm's-length transaction under present conditions for the sale of comparable assets insofar as such conditions can be reasonably evaluated.

(d) "**Stated Liabilities**" means the recorded liabilities (including contingent liabilities that would be recorded in accordance with GAAP) of a Person, as of the Closing after giving effect to the consummation of the transactions contemplated by this Agreement, the Ancillary Documents, the Form S-4 Registration Statement, the Proxy Statement / Prospectus or the Merger Agreement, determined in accordance with GAAP consistently applied.

(e) "**Identified Contingent Liabilities**" means the maximum estimated amount of liabilities reasonably likely to result from pending litigation, asserted claims and assessments, guaranties, uninsured risks and other contingent liabilities of a Person after giving effect to the transactions contemplated by this Agreement, the Ancillary Documents, the Form S-4 Registration Statement or the Proxy Statement / Prospectus (including all fees and expenses related thereto but exclusive of such contingent liabilities to the extent reflected in Stated Liabilities), as identified and explained in terms of their nature and estimated magnitude by responsible officers of such Person.

(f) "**Will be able to pay their Stated Liabilities and Identified Contingent Liabilities as they mature**" means a Person will have sufficient assets and cash flow to pay their respective Stated Liabilities and Identified Contingent Liabilities as those liabilities mature or (in the case of contingent liabilities) otherwise become payable.

(g) "**Do not have Unreasonably Small Capital**" means a Person after consummation of the transactions contemplated by this Agreement, the Ancillary Documents, the Form S-4 Registration Statement or the Proxy Statement / Prospectus is a going concern and has sufficient capital to ensure that it will continue to be a going concern for such period.

Section 3.29 No Other Representations and Warranties. Except for the representations and warranties contained in this Agreement (including Article III of this Agreement and the related portions of the Disclosure Schedules) or the Ancillary Documents to which Seller or ExchangeCo is a party, none of the Seller Group, the Company Group, or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of the Seller Group or the Company Group, including any representation or warranty as to the accuracy or completeness of any information regarding the Company Group furnished or made available to Buyer and its Representatives (including any information, documents, or material delivered to Buyer, management presentations, or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability, or success of the Company Group, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller and ExchangeCo that the statements contained in this Article IV are true and correct as of the date hereof and as of the Closing.

Section 4.01 Organization and Authority of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the Province of British Columbia. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller and ExchangeCo) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 4.02 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Organizational Documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby on a timely basis.

Section 4.03 Investment Purpose. Buyer is acquiring the Securities solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Securities are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Securities may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Buyer is able to bear the economic risk of holding the Securities for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment. Buyer has had the opportunity to visit with AO and MJF and meet with the officers of AO and MJF and other representatives to discuss the business, assets, Liabilities, financial condition, and operations of the Company Group, and to the actual knowledge of any director, manager or officer of Buyer, has received all materials, documents, and other information that Buyer deems necessary or advisable to evaluate the Company Group and the Securities, and has made its own independent examination, investigation, analysis, and evaluation of the Company Group and the Securities, including its own estimate of the value of the Securities. Buyer has undertaken such due diligence (including a review of the properties, Liabilities, books, records, and contracts of the Company Group) as Buyer deems adequate.

Section 4.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 4.05 Sufficiency of Funds. As of the Closing, Buyer will have sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price (including any adjustment amounts that may become payable by Buyer under Section 2.04) and consummate the transactions contemplated by this Agreement.

Section 4.06 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 4.07 Independent Investigation. Buyer has conducted its own independent investigation, review, and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company Group, and acknowledges that, to the actual knowledge of any director, manager or officer of Buyer, it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller, ExchangeCo and the Company Group for such purpose. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and the Ancillary Documents to which it is or will be a party and to consummate the transactions contemplated hereby and thereby, Buyer has relied solely upon its own investigation and express representations and warranties of Seller or ExchangeCo set forth in this Agreement (including Article III of this Agreement and the related portions of the Disclosure Schedule) or in the Ancillary Documents to which Seller or ExchangeCo is a party; and (b) none of Seller Group, the Company Group, or any other Person has made any representation or warranty as to the Seller Group, the Company Group, or this Agreement, except as expressly set forth in this Agreement (including Article III of this Agreement and the related portions of the Disclosure Schedule) or in the Ancillary Documents to which Seller or ExchangeCo is a party.

ARTICLE V
COVENANTS

Section 5.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise explicitly provided in this Agreement, explicitly provided in the Merger Agreement, or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller and ExchangeCo shall, and shall cause the Company Group to, (x) conduct the business of the Company Group in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company Group and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company Group. Without limiting the

foregoing, from the date hereof until the Closing Date, except as otherwise explicitly provided in this Agreement, explicitly provided for in the Merger Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), Seller and ExchangeCo shall cause the Company Group:

(a) to preserve and maintain all of its Permits;

(b) to pay its debts, Taxes and other obligations when due;

(c) to maintain the properties and assets owned, operated or used by the Company Group in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(d) to continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(e) to take commercially reasonable action to defend and protect its properties and assets from infringement or usurpation;

(f) to perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;

(g) to maintain its books and records in accordance with past practice;

(h) to comply in all material respects with all applicable Laws;

(i) not enter into, renew, amend, or extend any Contract (A) with any new or existing customer or supplier of the Company Group if the term of such Contract will end thirty (30) days or more thereafter or (B) if all such new, renewed, amended or extended Contracts would impose, in the aggregate, an obligation of more than One Hundred Thousand Dollars ($100,000) on the Company Group; and

(j) not to take or permit any action that would cause any of the changes, events or conditions described in Section 3.08 to occur*provided, however*, that nothing in this Section 5.01 shall be interpreted as limiting in any way the right of Seller or ExchangeCo to cause the Company Group to either: (i) sell all of the issued and outstanding common shares of Last Call Analytics, Inc. or all of the assets and liabilities of Last Call Analytics, Inc. to a third-party buyer, in each case if the Company Group does not incur or assume any Liabilities in connection with such sale; and/or (ii) wind-up the business of and dissolve Last Call Analytics, Inc. if the Company Group does not incur or assume any Liabilities in connection with such wind-up.

Section 5.02 Access to Information; Cooperation. From the date hereof until the Closing, Seller and ExchangeCo shall, and shall cause the Company Group to, (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Real Property, properties, assets, premises, books and records, Contracts and other documents and data related to the Company Group; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company Group as Buyer or any of its Representatives may reasonably request; (c) cause the Representatives of Seller, ExchangeCo and the Company Group to cooperate with Buyer in its investigation of the Company Group, *provided, however*, that any such investigation shall be conducted during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller Group's personnel and in such a manner as to not unreasonably interfere with the normal operations of the Company Group; and (d) cooperate in planning Buyer's or its Affiliate's integration of the Company Group. All requests by Buyer for access pursuant to this Section 5.02 shall be submitted or directed to such individuals as Seller may designate in writing from time to time. Notwithstanding anything to the contrary in this Agreement, neither Seller Group nor the Company Group shall be required to disclose any information to Buyer if such disclosure would, in Seller's sole discretion: (i) cause significant competitive harm to Seller Group, the Company Group, and their respective businesses if the transactions contemplated by this Agreement are not consummated; (ii) jeopardize any attorney-client or other privilege; (iii) contravene any applicable Law, fiduciary duty, or binding agreement entered into prior to the date of this Agreement; or (iv) reveal bids received from third parties in connection with transactions similar to those contemplated by this Agreement and any information and analysis (including financial analysis) relating to such bids. Prior to the Closing, (i) Buyer may contact Material Customers and Material Suppliers and Seller and ExchangeCo shall cause the Company Group to use commercially reasonable efforts to facilitate such contact and (ii) without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned, or delayed), Buyer shall not contact any suppliers that are not Material Suppliers to, or customers that are not Material Customers of, the Company Group unless such contact is in connection with a Commercial Agreement. Buyer shall, and shall cause its Representatives to, abide by the terms of Section 5.06 with respect to any access or information provided pursuant to this Section 5.02. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller or ExchangeCo in this Agreement, *provided, however*, that Buyer shall advise Seller as soon as practicable after it obtains knowledge of any breach or nonperformance of the representations, warranties or covenants of Seller or ExchangeCo if such breach or nonperformance would give rise to the failure of any of the conditions specified in Section 7.01 or Section 7.02.

Section 5.03 No Solicitation of Other Bids.

(a) Seller shall not, and shall not authorize or permit any of its Affiliates (including the Company Group) or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates (including the Company Group) and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal.

(b) In addition to the other obligations under this Section 5.03, Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this Section 5.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 5.04 Notice of Certain Events.

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller or ExchangeCo hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;

(iv) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting Seller, ExchangeCo or the Company Group that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.20 or that relates to the consummation of the transactions contemplated by this Agreement; and

(v) (A) any termination or non-renewal of a Contract with a Material Customer or a Material Supplier or (B) any notice or other communication from a Material Customer or a Material Supplier of its intention to terminate or not renew any such Contract; *provided that* if Seller notifies Buyer in writing of any event described in this Section 5.04(a)(v) within a reasonable period of time, then Seller shall be deemed to have promptly notified Buyer of such event.

(b) Buyer's receipt of information pursuant to this Section 5.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller or ExchangeCo in this Agreement (including Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 5.05 Resignations. Seller and ExchangeCo shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers, directors and managers of the Company Group requested by Buyer at least three (3) Business Days prior to the Closing.

Section 5.06 Confidentiality. From and after the Closing, each of Seller and ExchangeCo shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company Group, except to the extent that Seller or ExchangeCo can show that such information (a) is generally available to and known by the public through no fault of Seller, ExchangeCo, any of their Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, ExchangeCo, any of their Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller, ExchangeCo or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller or ExchangeCo is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller and ExchangeCo shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 5.07 Non-Competition; Non-Solicitation.

(a) For a period of five (5) years commencing on the Closing Date (the "**Restricted Period**"), each of Seller and ExchangeCo shall not directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company Group and customers or suppliers of the Company Group. Notwithstanding the foregoing, Seller may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 1% or more of any class of securities of such Person.

(b) During the Restricted Period, each of Seller and ExchangeCo shall not, directly or indirectly, (i) solicit (except pursuant to a general solicitation which is not directed specifically to any employees of the Company Group) or hire any employee of the Company Group or any former employee of the Company Group or (ii) encourage any employee of the Company Group to leave such employment.

(c) During the Restricted Period, each of Seller and ExchangeCo shall not, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company Group or potential clients or customers of the Company Group for purposes of diverting their business or services from the Company Group.

(d) Each of Seller and ExchangeCo acknowledges that a breach or threatened breach of this Section 5.07 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller or ExchangeCo of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(e) Each of Seller and ExchangeCo acknowledges that the restrictions contained in this Section 5.07 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 5.07 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 5.07 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 5.08 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller and ExchangeCo shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 3.05 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company Group is a party is not obtained prior to the Closing, each of Seller and ExchangeCo shall, subsequent to the Closing, cooperate with Buyer and the Company Group in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, each of Seller and ExchangeCo shall use its reasonable best efforts to provide the Company Group with the rights and benefits of the affected Contract for the term thereof, and, if Seller or ExchangeCo provides such rights and benefits, the Company Group shall assume all obligations and burdens thereunder.

(e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller, ExchangeCo or the Company Group with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(f) Notwithstanding the foregoing, nothing in this Section 5.08 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company Group or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 5.09 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller or ExchangeCo prior to the Closing, or for any other reasonable purpose, for a period of seven years after the Closing, Buyer shall:

(i) retain the books and records (including personnel files) of the Company Group relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company Group; and

(ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such books and records;

provided, however, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article VI.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company Group after the Closing, or for any other reasonable purpose, for a period of seven years following the Closing, each of Seller and ExchangeCo shall:

(i) retain the books and records (including personnel files) of Seller or ExchangeCo, respectively, which relate to the Company Group and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Representatives of Buyer or the Company Group reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;

provided, *however*, that any books and records related to Tax matters shall be retained pursuant to the periods set forth in Article VI.

(c) Neither Buyer, Seller nor ExchangeCo shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.09 where such access would violate any Law.

Section 5.10 Legal Proceedings. Each of Seller and ExchangeCo shall use, and cause the Company Group to use, commercially reasonable efforts to advance any Actions pending or, to Seller's Knowledge, threatened against or by the Company Group affecting any of its properties or assets (or by or against Seller, ExchangeCo or any of

their Affiliates and relating to the Company Group). Each of Seller and ExchangeCo shall, and shall cause the Company Group to, consult with Buyer regarding the defense or settlement of any such Action. Each of Seller and ExchangeCo shall not settle any such Action without the prior writer consent of Buyer (such consent not to be unreasonably withheld, conditioned, or delayed).

Section 5.11 Closing Conditions. From the date hereof until the Closing, each party hereto shall, and each of Seller and ExchangeCo shall cause the Company Group to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VII hereof.

Section 5.12 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party (or their Affiliates) to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), and the parties shall cooperate as to the timing and contents of any such required announcement.

Section 5.13 Registration Statement; Proxy Statement / Prospectus.

(a) As promptly as practicable after the date of this Agreement, Seller shall prepare and cause to be filed with the SEC the Proxy Statement / Prospectus and Seller shall prepare and cause to be filed with the SEC the Form S-4 Registration Statement, in which the Proxy Statement / Prospectus will be included as a prospectus.

(b) Seller covenants, represents and warrants that the Proxy Statement / Prospectus, including any pro forma financial statements included therein (and the letter to stockholders, notice of meeting and form of proxy included therewith), will not, at the time that the Proxy Statement / Prospectus or any amendment or supplement thereto is filed with the SEC or is first mailed to Seller's stockholders, at the time of Seller's Stockholders' Meeting and at the time declared effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, Seller makes no covenant, representation or warranty with respect to statements made in the Proxy Statement / Prospectus (and the letter to stockholders, notice of meeting and form of proxy included therewith), if any, based on information furnished in writing by Buyer specifically for inclusion therein. Seller shall use commercially reasonable efforts to cause the Form S-4 Registration Statement and the Proxy Statement / Prospectus to comply with the applicable rules and regulations promulgated by the SEC in all material respects.

(c) Seller shall notify Buyer promptly of the receipt of any comments from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement / Prospectus or the Form S-4 Registration Statement or for additional information and shall supply Buyer with copies of (i) all correspondence between Seller or any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Proxy Statement / Prospectus, the Form S-4 Registration Statement or the Contemplated Transactions and (ii) all orders of the SEC relating to the Form S-4 Registration Statement. Seller shall use its commercially reasonable efforts to respond as promptly as reasonably practicable to any comments of the SEC or the staff of the SEC with respect to the Proxy Statement / Prospectus and Form S-4 Registration Statement, and Buyer and its counsel shall have a reasonable opportunity to participate in the formulation of any response to any such comments of the SEC or its staff. Seller shall use its commercially reasonable efforts to have the Form S-4 Registration Statement declared effective by the SEC under the Securities Act as promptly as practicable after it is filed with the SEC. No filing of, or amendment or supplement to, the Form S-4 Registration Statement will be made by Seller, and no filing of, or amendment or supplement to, the Proxy Statement / Prospectus will be made by Seller, in each case, without providing Buyer a reasonable opportunity to review and comment thereon. Each party shall promptly furnish to the other party all information concerning such party and such party's Subsidiaries and such Party's stockholders or members that may be required or reasonably requested in connection with any action contemplated by this Section. If any event relating to Seller occurs, or if Seller becomes aware of any information, that should be disclosed in an amendment or supplement to the Form S-4 Registration Statement or the Proxy Statement / Prospectus, then Seller shall promptly inform Buyer thereof and shall cooperate fully with Buyer in filing such amendment or supplement with the SEC and, if appropriate, in mailing such amendment or supplement to Seller's stockholders.

(d) Buyer shall reasonably cooperate with Seller and provide, and require its Representatives to provide, Seller and its Representatives with all true, correct and complete information regarding Buyer that is required by applicable Law to be included in the Form S-4 Registration Statement and the Proxy Statement / Prospectus or reasonably requested from Buyer to be included in the Form S-4 Registration Statement and the Proxy Statement / Prospectus. Buyer shall use its commercially reasonable efforts to assist Seller in responding to comments of the SEC or the staff of the SEC as they related to the information regarding the Buyer included or required to be included in the Proxy Statement / Prospectus and Form S-4 Registration Statement.

Section 5.14 Seller's Stockholders' Meeting.

(a) Promptly after the Form S-4 Registration Statement has been declared effective by the SEC under the Securities Act, Seller shall (i) take reasonable action necessary under applicable Law to call, give notice of and, within 60 calendar days after the date the S-4 Registration Statement is declared effective by the SEC, hold a meeting of Seller's stockholders for the purpose of seeking approval of (A) the issuance of shares of Seller's common stock pursuant to the terms of the Merger Transaction and under the applicable requirements of the Nasdaq Capital Markets, (B) the change of control of Seller resulting from the Merger Transaction, to the extent such approval is necessary, (C) the amendment of Seller's certificate of incorporation to effect the Reverse Split, (D) if requested by Gryphon prior to the filing with the SEC of the Proxy Statement / Prospectus, the amendment of Seller's certificate of incorporation to increase the authorized shares of Seller's common stock, (E) the amendment of Seller's certificate of incorporation to effect the name change of Seller, (F) in accordance with Section 14A of the Exchange Act and the applicable SEC rules issued thereunder, seeking advisory approval of a proposal to Seller's stockholders for a non-binding, advisory vote to approve certain compensation that may become payable to Seller's named executed officers in connection with the completion of the Merger Transaction, if applicable, and (G) approve the transactions under this Agreement and the Ancillary Documents (the matters contemplated by the foregoing clauses (A) – (G), collectively, the " **Seller's Stockholder Matters**") and (ii) mail to Seller's stockholders as of the record date established for the meeting of Seller's stockholder, the Proxy Statement / Prospectus (such meeting, the " **Seller's Stockholders' Meeting**").

(b) Seller agrees that, subject to Section 5.14(c): (i) Seller's board of directors shall recommend that Seller's stockholders vote to approve the Seller's Stockholder Matters (the "**Seller Board Recommendation**"); (ii) the Proxy Statement / Prospectus shall include a statement of the Seller Board Recommendation; (iii) Seller's board of directors shall use commercially reasonable efforts to solicit such approval within the timeframe set forth in Section 5.14(a); and (iv) (A) the Seller Board Recommendation shall not be withdrawn or modified in a manner adverse to Buyer, and no resolution by Seller's board of directors or any committee thereof to withdraw or modify the Seller Board Recommendation in a manner adverse to Buyer shall be adopted or proposed and (B) Seller's board of directors shall not recommend any Acquisition Proposal or alternative transaction (collectively a "**Seller Board Adverse Recommendation Change**").

(c) Notwithstanding the foregoing, at any time prior to the receipt of the Required Seller's Stockholder Vote, Seller's board of directors may make a Seller Board Adverse Recommendation Change, if Seller's board of directors has received an Acquisition Proposal for Seller that Seller's board of directors has determined in

its good faith judgment, after consultation with Seller's outside legal counsel and financial advisors, constitutes, or would reasonably be expected to result in, a Superior Offer, Seller's board of directors determines in its good faith judgment, after consultation with Seller's outside legal counsel and financial advisors, that a Seller Board Adverse Recommendation Change is consistent with Seller's board of directors' compliance with its fiduciary obligations to Seller's stockholders under applicable Law; *provided*, *however*, that prior to Seller taking any action permitted under this Section 5.14(c), in the case of a Superior Offer, (1) Seller must promptly notify Buyer, in writing, at least five Business Days (the "**Notice Period**") before making a Seller Board Adverse Recommendation Change, of its intention to take such action with respect to a Superior Offer, which notice shall state expressly that Seller has received an Acquisition Proposal for Seller that Seller's board of directors intends to declare a Superior Offer and that Seller's board of directors intends to make a Seller Board Adverse Recommendation Change, and (2) Seller attaches to such notice the most current version of the proposed agreement and the identity of the third party making such Superior Offer; and (3) Seller negotiates with Buyer in good faith to make such adjustments in the terms and conditions of this Agreement so that such Acquisition Proposal for Seller ceases to constitute a Superior Offer, if Buyer, in its discretion, proposes to make such adjustments (it being agreed that in the event that, after commencement of the Notice Period, there is any material revision to the terms of a Superior Offer, the Notice Period shall be extended, if applicable, to ensure that at least five Business Days remain in the Notice Period subsequent to the time Seller notifies Buyer of any such material revision.

(d) Unless Seller's board of directors has effected a Seller Board Adverse Recommendation Change in accordance with Section 5.14(c), Seller's obligation to call, give notice of and hold the Seller's Stockholders' Meeting in accordance with Section 5.14(a) shall not be limited or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or Acquisition Proposal, or by any withdrawal or modification of the Seller Board Recommendation.

(e) Nothing contained in this Agreement shall prohibit Seller or its board of directors from (i) taking and disclosing to Seller's stockholders a position as contemplated by Rule 14e-2(a) under the Exchange Act or complying with the provisions of Rule 14d-9 under the Exchange Act (other than Rule 14d-9(f) under the Exchange Act), (ii) making any disclosure to Seller's stockholders if Seller's board of directors determines in good faith, after consultation with its outside legal counsel, that the failure to make such disclosure would be inconsistent with its fiduciary duties to Seller's stockholders under applicable Law, and (iii) making a "stop, look and listen" communication to Seller's stockholders pursuant to Rule 14d-9(f) under the Exchange Act, *provided*, *however*, that in the case of each of the foregoing clauses "(i)" and "(ii)," any such disclosure or public statement shall be deemed to be a Seller Board Adverse Recommendation Change subject to the terms and conditions of this Agreement unless Seller's board of directors reaffirms the Seller Board Recommendation in such disclosure or public statement or within five Business Days of such disclosure or public statement.

Section 5.15 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement. In addition to and not in limitation of the foregoing, (i) Seller shall not amend, modify, supplement, waive, terminate, or assign any Voting and Support Agreement to which Seller is a party without Buyer's prior written consent, (ii) Seller shall enforce each such Voting and Support Agreement to which it is a party, (iii) if the Seller fails to enforce any such Voting and Support Agreement, then Buyer shall have the right to cause Seller to enforce such Voting and Support Agreement.

Section 5.16 Business Acquisition Report. Each of Seller and ExchangeCo shall provide, shall cause its Subsidiaries to provide, and shall use its commercially reasonable efforts to cause its and their respective employees and auditors to provide such cooperation and assistance in connection with the preparation and filing of any business acquisition report (as such term is defined in National Instrument 51-102 – Continuous Disclosure Obligations of the Canadian Securities Administrators) as is reasonably requested, from time to time, by Buyer. Such assistance shall include each of Seller and ExchangeCo cooperating with Buyer, causing its Subsidiaries to cooperate with Buyer and using commercially reasonable efforts to cause the auditors of each of Seller or ExchangeCo and its Subsidiaries to cooperate with Buyer with respect to the preparation of the requisite financial statements, including any proforma financial statements, required in connection with the filing of any business acquisition report. Buyer shall be responsible for all reasonable costs and expenses incurred by Seller or ExchangeCo (included any fees of the auditors of each of Seller, ExchangeCo or their Subsidiaries) related to the cooperation and assistance by Seller, ExchangeCo and their Subsidiaries in respect of the preparation of a business acquisition report pursuant hereto.

Section 5.17 Tax Matters. From the date hereof until the Closing, each of Seller and ExchangeCo shall ensure that each Company Group member:

(a) duly pays, within the prescribed time, all Taxes that become due and payable on or before the Closing Date;

(b) makes adequate provision in such Company Group member's financial and accounting records for the Taxes that relate to any period ending on or before the Closing Date (including as a consequence of the Closing) but that are not yet due and payable and for which Tax Returns are not yet required to be filed;

(c) withholds from each payment made by it the amount of all Taxes and other deductions required under any applicable Tax Laws to be withheld therefrom and pays all those amounts to the relevant Governmental Authority within the time required under any applicable Tax Laws;

(d) refrains from entering into any arrangements to provide for an extension of time with respect to any assessment or reassessment of Tax, the filing of any Tax Return or the payment of any Tax by it, without the prior written consent of Buyer; and

(e) except as may be required by generally accepted accounting principles or applicable laws, does not make any material change in the Tax, financial or accounting policies or practices applied in the preparation of the Financial Statements, including any material change in credit, collection or payment policies, procedures or practices or the method of determining reserves.

Section 5.18 Employment and Benefits Matters.

(a) MJF.

(i) As soon as practical following the execution of this Agreement, Seller shall, and shall cause its Affiliates to, (i) identify to Buyer each employee of the Seller Group that provides services relating to MJF (an "**MJF-Related Employee**") and (ii) facilitate Buyer's assessment of each MJF-Related Employee (which may include meetings with such MJF-Related Employee).

(ii) At least sixty (60) days prior to the Closing, Buyer shall select each MJF-Related Employee that Buyer wishes to be employed by Buyer or a Subsidiary of Buyer designated by Buyer (an "**MJF Prospective Employee**").

(iii) At least thirty (30) days prior to the Closing, Buyer (or a Subsidiary of Buyer designated by Buyer) shall extend offers of employment to the MJF Prospective Employees, in each case with employment to be contingent on and effective as of the Closing.

(b) AO.

(i) As soon as practical following the execution of this Agreement, Seller and ExchangeCo shall, and shall cause its Affiliates to, (i) identify to Buyer each employee of AO Group (an "**AO Employee**") or the Seller Group that provides services relating to AO (an "**AO-Related Employee**") and (ii) facilitate Buyer's assessment of each AO Employee and AO-Related Employee (which may include meetings with such AO Employee or AO-Related Employee).

(ii) At least sixty (60) days prior to the Closing, Buyer shall select those AO Employees that Buyer wishes to remain employed by AO (an "**AO Retained Employee**") and those AO-Related Employees that Buyer wishes to be employed by Buyer or a Subsidiary of Buyer designated by Buyer (an "**AO Prospective Employee**").

(iii) Prior to the Closing, Seller shall transfer to a Seller Group member (other than a Company Group member) the employment of each AO Employee that is not an AO Retained Employee.

(iv) At least thirty (30) days prior to the Closing, Buyer (or a Subsidiary of Buyer designated by Buyer) shall extend offers of employment to those AO-Related Employees that Buyer wishes to be employed by Buyer, in each case with employment to be contingent on and effective as of the Closing; *provided that*, at Buyer's option, Seller shall cause AO to extend any such offer of employment.

(c) Seller shall, and shall cause its Affiliates to, reasonably cooperate with Buyer in connection with this Section 5.18. Seller shall ensure that, as of the Closing, (i) MJF does not have any employees other than MJF Prospective Employees and (ii) AO does not have any employees other than AO Retained Employees or, to the extent determined by Buyer, AO Prospective Employees.

(d) Seller and ExchangeCo shall be solely responsible, and the Buyer shall have no obligations whatsoever, for any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Seller Group or the Company Group (including, without limitation, wages, hourly pay, commissions, bonuses, fees, salary, overtime, accrued vacation pay, sick pay, public holiday pay, fringe, pension or profit sharing benefits, termination pay, severance pay, pay-in-lieu-of-notice, and any other compensation as well as any fines or penalties for failure to pay any of the foregoing) or other sums due to the Seller Group's or the Company Group's current or former employees, independent contractors or consultants for any period relating to the service with the Seller Group at any time on or before the Closing Date, and Seller and ExchangeCo shall pay all such amounts to all entitled Persons on or before the Closing Date or, if not paid before the Closing Date, promptly following the Closing Date. Seller and ExchangeCo shall be solely responsible, and the Buyer shall have no obligations whatsoever, for any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Seller Group or the Company Group that are partly or wholly the result of the transactions contemplated in this Agreement, including any payment related to retention or upon a change of control, and Seller and ExchangeCo shall pay all such amounts to all entitled Persons. Upon Buyer's request, Seller and ExchangeCo shall provide reasonable evidence of Seller's or ExchangeCo's payments to, or releases obtained from, any of the Persons described in this Section 5.18(d).

(e) Seller and ExchangeCo shall remain solely responsible, and Buyer shall have no obligations whatsoever, for the satisfaction of all Liabilities pursuant to any Benefits Plan and Non-U.S. Benefits Plan, which Liabilities relate to events occurring on or before the Closing Date. Seller and ExchangeCo shall also be solely responsible, and the Buyer shall have no obligations whatsoever, for any compensation, benefit or other amounts payable pursuant to a Benefit Plan or Non-U.S. Benefit Plan that are partly or wholly the result of the transactions contemplated in this Agreement. Seller and ExchangeCo also shall remain solely responsible for all claims under the *Workplace Safety and Insurance Act*, 1997 (Ontario) (or the comparable legislation of any other jurisdiction) of any current or former employees, officers, directors, independent contractors or consultants of the Seller Group or the Company Group that relate to events occurring on or before the Closing. Seller and ExchangeCo shall pay or cause to be paid, all such amounts to the appropriate persons.

ARTICLE VI
TAX MATTERS

Section 6.01 Tax Covenants.

(a) Without the prior written consent of Buyer, each of Seller and ExchangeCo (and, prior to the Closing, the Company Group, its Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company Group, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that is inconsistent with past practice or that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or any Company Group member in respect of any taxable period (or portion thereof) beginning after the Closing Date. Each of Seller and ExchangeCo agrees that Buyer is to have no liability for any Tax resulting from any action of Seller, ExchangeCo, the Company Group, their Affiliates or any of their respective Representatives, and agrees to indemnify and hold harmless Buyer (and, after the Closing Date, the Company Group) against any such Tax or reduction of any Tax asset.

(b) Return Filing Obligations.

(i) Seller and ExchangeCo shall prepare and timely file, or cause to be prepared and timely filed, all Consolidated Returns and shall pay all Taxes due in respect of such returns. All such Consolidated Returns shall be prepared in a manner consistent with past practice (unless otherwise required by applicable Law). From and after the Closing, Buyer shall cause the Company Group to provide Seller and its Affiliates in a timely fashion all filing information reasonably necessary for the preparation and filing of any returns of Seller or ExchangeCo due after the Closing.

(ii) Buyer shall prepare and timely file, or cause to be prepared and timely filed, all Tax Returns of the Company Group (excluding Consolidated Returns) that are due after Closing ("**Buyer Tax Returns**"). In the case of a Tax Return of the Company Group for a Pre-Closing Tax Period ('**Seller Review Returns**"), such Tax Returns shall be prepared in a manner consistent with the most recent past practice of the applicable Company Group member unless otherwise required by applicable Law. Buyer shall submit such Seller Reviewed Returns to Seller at least ten (10) days prior to the anticipated filing date of such Seller Reviewed Return, and Buyer will consider in good faith any reasonable comments Seller may have on such Seller Reviewed Returns. Seller shall pay to Buyer any Taxes reflected as due on any Seller Reviewed Returns when such Seller Reviewed Return is filed to the extent such Taxes are Indemnified Taxes.

(c) Notwithstanding anything to the contrary in this Agreement, all Transfer Taxes shall be borne and paid by Seller or ExchangeCo when due, regardless of the Person liable for such obligations under applicable law or the Person making payment to the applicable Governmental Authority or other third party. Seller and ExchangeCo shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 6.02 Termination of Existing Tax Sharing Agreements. Notwithstanding anything to the contrary in this Agreement, all liabilities, obligations and other rights between any member of the Seller Group, on the one hand, and the Company Group, on the other hand, under any Tax sharing or Tax indemnity agreement in effect prior to the Closing Date (other than this Agreement) shall cease and terminate as of the Closing Date as to all past, present and future taxable periods.

Section 6.03 Tax Indemnification.

(a) Except to the extent treated as a liability in Closing Working Capital or as Closing Indebtedness, Seller and ExchangeCo shall indemnify, jointly and severally, the Company Group, Buyer and their Affiliates from and hold them harmless against:

(i) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.25;

(ii) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation of Seller, ExchangeCo or their Affiliates in Article VI;

(iii) all Indemnified Taxes;

(iv) reasonable out-of-pocket fees and expenses attributable to any item described in clause (i), (ii) or (iii).

Seller and ExchangeCo shall pay (x) any such Taxes Seller or ExchangeCo is responsible for which are reportable on a Tax Return due after the Closing Date at the time and in the manner specified in Section 6.01(c), and (y) any other Taxes for which it is responsible to pay under this Section 6.03 upon a determination that Tax is payable or on written demand, whichever is later, subject to Section 6.10. Seller and ExchangeCo shall not be liable for indemnification under this Section 6.03 until the aggregate amount of all Losses in respect of indemnification under this Section 6.03 exceeds Ten Thousand Dollars ($10,000), in which event Seller and ExchangeCo shall be required to pay or be liable for all such Losses from the first dollar. The indemnification provided by Seller and ExchangeCo pursuant to Section 6.03(a) shall not exceed Five Hundred Thousand Dollars ($500,000).

(b) Except to the extent treated as an asset in Closing Working Capital, Buyer shall indemnify the Seller and its Affiliates from and hold them harmless against any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation of Buyer or its Affiliates in Article VI. The indemnification provided by Buyer pursuant to Section 6.03(b) shall not exceed Five Hundred Thousand Dollars ($500,000).

Section 6.04 Allocation of Taxes for Straddle Period. All Taxes and Tax liabilities that relate to a Straddle Period shall be allocated to the Pre-Closing Tax Period as follows:

(a) In the case of Taxes (i) based upon, or measured by reference to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, such Taxes shall be deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and

(b) In the case of other Taxes, such Taxes shall be deemed equal to the amount of such Taxes for the entire period multiplied by a fraction, the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

Section 6.05 Tax Treatment. Seller, ExchangeCo and Buyer agree that the transactions contemplated hereby related to the MJF Group will be treated for U.S. federal income Tax purposes and applicable state income Tax purposes as a taxable sale by Seller and a purchase by Buyer of the assets of each of the members of the MJF Group.

Section 6.06 Tax Allocation. Seller, ExchangeCo and Buyer agree that the portion of the Purchase Price allocable to the Membership Interests (and the liabilities of the MJF Group) shall be allocated among the assets of the MJF Group for U.S. federal and applicable state and local income tax purposes as shown on the allocation schedule (the "**Allocation Schedule**"). A draft of the Allocation Schedule shall be prepared by Buyer and delivered to Seller within 60 days following the Closing Date. If Seller notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule, Seller and Buyer shall negotiate in good faith to resolve such dispute; *provided*, *however*, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within 120 days following the Closing Date, such dispute shall be resolved by the Independent Accountant. The fees and expenses of such accounting firm shall be borne equally by Seller and Buyer. Buyer and Seller shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to Section 2.04 related to the MJF Group herein shall be allocated in a manner consistent with the Allocation Schedule.

Section 6.07 Contests.

(a) Each Party will promptly notify the other Party in writing upon receipt by such Party (or any of its Affiliates) of notice of any pending or threatened audit, examination or proceeding by a Governmental Authority in respect of which an indemnity may be sought pursuant to this Article VI (a "**Tax Claim**"); *provided*, *however*, that the failure of such party to give prompt notice shall not relieve the other party of any of its obligations under this Article VI except to the extent the other party can demonstrate actual prejudice as a result of such failure.

(b) Seller (or Affiliate thereof) shall control any Tax Claim related to Consolidated Returns and Taxes of the Company Group to be reported on or related to a Consolidated Return. Seller shall keep Buyer fully and timely informed with respect to the commencement, status and nature of any such Tax Claim related to Taxes of

the Company Group. Seller shall, in good faith, allow Buyer to make comments to Seller regarding the conduct of or positions taken in any such proceeding. Buyer shall have the right to consent prior to any settlement with respect to (or abandonment of) any such Tax Claim related to Taxes of the Company Group (provided such consent cannot be unreasonably withheld, conditioned or delayed).

(c) Buyer (or Affiliate thereof) shall control any Tax Claim related to Taxes of the Company Group with respect to a Pre-Closing Tax Period and Straddle Period other than Tax Claims subject to Section 6.07(b). Buyer shall keep Seller fully and timely informed with respect to the commencement, status and nature of any such Tax Claim. Buyer shall, in good faith, allow Seller to make comments to Buyer regarding the conduct of or positions taken in any such proceeding. Seller shall have the right to consent prior to any settlement with respect to (or abandonment of) any such Tax Claim (provided such consent cannot be unreasonably withheld, conditioned, or delayed).

Section 6.08 Cooperation and Exchange of Information. Each of Seller, ExchangeCo and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Article VI or in connection with any audit or proceeding in respect of Taxes of the Company Group. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to ruling or other determinations by tax authorities. Each of Seller, ExchangeCo and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company Group for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company Group for any taxable period beginning before the Closing Date, Seller, ExchangeCo or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials. Notwithstanding anything to the contrary contained herein, (i) Seller shall not be required to provide Buyer with a copy of, or otherwise disclose the contents of, any Consolidated Return and (ii) Buyer shall not be required to provide Seller or ExchangeCo with a copy of, or otherwise disclose the contents of, any Tax Claim with respect to a combined, consolidated, affiliates, unitary or aggregated Tax Return that includes Buyer or any Affiliate thereof.

Section 6.09 Tax Treatment of Indemnification Payments. Any indemnification payments pursuant to this Article VI shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 6.10 Payments to Buyer. Any amounts payable to Buyer pursuant to this Article VI (other than amounts described in Section 6.01(c), which shall be paid directly by Seller or ExchangeCo to Buyer) shall be satisfied by Seller or ExchangeCo.

Section 6.11 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.25 and this Article VI shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

Section 6.12 Overlap. To the extent that any obligation or responsibility pursuant to Article VIII may overlap with an obligation or responsibility pursuant to this Article VI, the provisions of this Article VI shall govern.

Section 6.13 Transaction Elections. None of the Buyer, any Company Group member or any of their Affiliates shall make any election under Section 338 or Section 336(e) of the Code with respect to the transactions contemplated by this Agreement.

Section 6.14 Closing Date Transactions. All transactions not in the ordinary course of business occurring after the Closing shall be treated for purposes of this Article VI, and, to the extent permitted by Law, for purposes of filing all Tax Returns of the Seller, and the Company Group members, as occurring on the day after the Closing Date, and the Buyer shall be responsible for all Taxes arising from such transactions.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of Buyer, Seller or ExchangeCo pursuant to the HSR Act or other applicable Law relating to antitrust, competition or foreign investment matters, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) (i) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof and (ii) there shall be no Action pending, or overtly threatened in writing, by an official of a Governmental Authority in which such Governmental Authority indicates that it intends to challenge or seek to restrain or prohibit the consummation of such transactions, but not including any notice received by a Governmental Authority that pursuant to applicable law such Governmental Authority reserves the right to review the transactions in the future.

(c) Seller or ExchangeCo, as applicable, shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 3.05 of the Disclosure Schedules, in each case, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

(d) Seller has obtained the Required Seller's Stockholder Vote with respect to the transactions contemplated by this Agreement and the Ancillary Documents, in each case to the extent that stockholder approval is required by Law.

(e) The Merger Transaction has closed prior to the Closing or will close simultaneously with the Closing*provided that* the condition set forth in this Section 7.01(e) shall be deemed to be waived in the event that the Merger Transaction has not closed by five (5) Business Days prior to the Outside Date.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller or ExchangeCo contained in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05, Section 3.27 and Section 3.28, the representations and warranties of Seller or ExchangeCo contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on the Closing Date, except in each case, or in the aggregate, where the failure to be true and correct would not have a Material Adverse Effect (*provided that* all "Material Adverse Effect" qualifications and other materiality qualifications limiting the scope of the representations and warranties of Seller or ExchangeCo will be disregarded). The representations and warranties of Seller or ExchangeCo contained in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05, Section 3.27 and Section 3.28 shall be true and correct in all but de minimus respects on and as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on the Closing Date.

(b) Each of Seller and ExchangeCo shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided that*, with respect to agreements, covenants and conditions that are qualified by materiality, each of Seller and ExchangeCo shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Buyer, Seller, ExchangeCo or the Company Group, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

(d) All approvals, consents and waivers that are listed on Section 3.05 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(e) From the Interim Balance Sheet Date, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(f) The Ancillary Documents shall have been executed and delivered by the parties thereto and true and complete copies thereof shall have been delivered to Buyer.

(g) Buyer shall have received resignations of the directors, managers, and officers of the Company Group pursuant to Section 5.05.

(h) At least three (3) Business Days before Closing, Seller shall have delivered to Buyer the Closing Indebtedness Certificate and the Closing Transaction Expenses Certificate.

(i) Seller shall have delivered to Buyer the Estimated Closing Statement contemplated in Section 2.04(a)(ii).

(j) Seller shall have delivered to Buyer a good standing certificate (or its equivalent) for each Company Group member from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which such Company Group member is organized and the various jurisdictions in which such Company Group member is qualified to do business.

(k) Each of Seller and ExchangeCo shall have delivered to Buyer a completed and signed IRS Form W-9.

(l) Seller and ExchangeCo, as applicable, shall have duly executed and delivered the Assignment to Buyer.

(m) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of each of Seller and ExchangeCo, that each of the conditions set forth in Section 7.02(a), Section 7.02(b), Section 7.02(e), Section 7.02(q), Section 7.02(r), Section 7.02(t), Section 7.02(u), Section 7.02(v), Section 7.02(w), Section 7.02(x), Section 7.02(y), and Section 7.02(aa) have been satisfied.

(n) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each of Seller and ExchangeCo certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller or ExchangeCo authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(o) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each of Seller and ExchangeCo certifying the names and signatures of the officers of Seller or ExchangeCo authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(p) Buyer, a Subsidiary of Buyer, or the Company Group shall have entered into employment agreements or employment arrangements with up to three (3) key employees who are MJF-Related Employee and who will be identified by Buyer within thirty (30) Business Days after signing of this Agreement ("**Key Employees**"), in each case in form and substance reasonably satisfactory to Buyer; *provided that* the condition set forth in this Section 7.02(p) shall be deemed to be waived with respect to a Key Employee if Buyer, a Subsidiary of Buyer, or the Company Group does not offer such Key Employee employment terms that, in the aggregate, are substantially the same as, or superior to, such Key Employee's employment terms as of the date of this Agreement.

(q) The employees of the AO Group shall not include any Person other than AO Retained Employees or, to the extent determined by Buyer, AO Prospective Employees and the employees of the MJF Group shall not include any Person other than MJF Retained Employees.

(r) At least eighty percent (80%) of the MJF Retained Employees and the AO Retained Employees, in the aggregate, shall be employees of Buyer, a Subsidiary of Buyer, or the Company Group and not have given notice of their intent to terminate their employment; *provided that* the condition set forth in this Section 7.02(r) shall be deemed to be waived with respect to a MJF Retained Employee or an AO Retained Employee if Buyer, a Subsidiary of Buyer, or the Company Group does not offer such employee employment terms that, in the aggregate, are substantially the same as, or superior to, such employee's employment terms as of the date of this Agreement.

(s) Each of Seller and ExchangeCo shall have delivered to Buyer such documents or instruments as Buyer reasonably requests and are reasonably necessary to provide evidence that Seller's or ExchangeCo's representation and warranty in Section 3.28 is true and correct in all respects.

(t) (i) Each Material Contract between the Commonwealth of Pennsylvania, Department of Health, Medical Marijuana and MJF shall be in full force and effect, (ii) neither a MJF Group member nor the Commonwealth of Pennsylvania, Department of Health, Medical Marijuana shall have provided or received any notice of any intention to terminate or not renew any such Material Contract, (iii) no MJF Group member shall have materially breached any such Material Contract and the Commonwealth of Pennsylvania, Department of Health, Medical Marijuana shall not have alleged any such material breach, and (iv) the Commonwealth of Pennsylvania, Department of Health, Medical Marijuana shall not have revoked or modified in any material way the terms of renewal as expressed in the renewal letter from it to MJF dated January 4, 2023.

(u) (i) Each Material Contract with the State of Utah Department of Technology shall be in full force and effect, (ii) neither a MJF Group member nor the State of Utah Department of Technology shall have provided or received any notice of any intention to terminate or not renew any such Material Contract, and (iii) no MJF Group member shall have materially breached any such Material Contract and the State of Utah Department of Technology shall not have alleged any such material breach.

(v) Material Contracts constituting no more than 50% of MJF Group's recurring subscription revenue that is up for renewal between the date of this Agreement and the Closing Date shall have terminated, otherwise ceased to be in full force and effect, or been subject to a notice of termination or non-renewal; *provided that*, for purposes of this clause (v), any such recurring subscription revenue that has migrated to Buyer or its Subsidiaries shall be deemed not to have terminated, otherwise ceased to be in full force and effect, or been subject to a notice of termination.

(w) As an additional condition with respect to the consummation of the sale and purchase of the Shares contemplated by this Agreement, Material Contracts constituting no more than 50% of AO Group's recurring subscription revenue that is up for renewal between the date of this Agreement and the Closing Date shall have terminated, otherwise ceased to be in full force and effect, or been subject to a notice of termination or non-renewal; *provided that*, for purposes of this clause (w), any such recurring subscription revenue that has migrated to Buyer or its Subsidiaries shall be deemed not to have terminated, otherwise ceased to be in full force and effect, or been subject to a notice of termination.

(x) None of the Company Group shall be in breach of or default under (or is alleged to be in breach of or default under) in any material respect any Material Contract, and no event or circumstance shall have occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

(y) Neither Seller, MJF Group, nor any of their Affiliates shall have received from the Commonwealth of Pennsylvania or the Commonwealth of Pennsylvania, Department of Health, Medical Marijuana a change request or instruction to provide expanded access to third parties of MJF Group's software's API application programming interface (API).

(z) As an additional condition with respect to the consummation of the sale and purchase of the Shares contemplated by this Agreement, Buyer shall have completed and been satisfied, in its reasonable discretion, with its confirmatory due diligence review of each member of AO Group; *provided that* (i) such due diligence review shall consist only of a demonstration of AO Group's products and services, a walk-through of AO Group's source code, a due diligence review of AO Group's customers, and a due diligence review of AO Group's employees and human resources practices, and (ii) the condition set forth in this Section 7.02(z) shall be deemed to be waived in the event that Buyer does not provide written notice to Seller, on or before the date that is thirty (30) days after the execution of this Agreement, that such condition has not been satisfied.

(aa) The Company Group shall consist of AO and MJF and shall not include any other Person.

(bb) Each of Seller and ExchangeCo shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Seller and ExchangeCo. The obligations of Seller and ExchangeCo to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 4.01, Section 4.02 and Section 4.04, the representations and warranties of Buyer contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on the Closing Date, except in each case, or in the aggregate, where the failure to be true and correct would not have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby on a timely basis (*provided that* all materiality qualifications limited the scope of the representations and warranties of Buyer will be disregarded). The representations and warranties of Buyer contained in Section 4.01, Section 4.02 and Section 4.04 shall be true and correct in all respects on and as of the date of this Agreement and on and as of the Closing Date with the same force and effect as if made on the Closing Date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.

(d) The Ancillary Documents to which Buyer is a party shall have been executed and delivered by Buyer and true and complete copies thereof shall have been delivered to Seller.

(e) Buyer shall have delivered to Seller cash in an amount equal to the Purchase Price by wire transfer of immediately available funds, to an account or accounts designated at least three Business Days prior to the Closing Date by Seller in a written notice to Buyer.

(f) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied.

(g) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(i) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE VIII
SURVIVAL AND INDEMNIFICATION

Section 8.01 Survival. All representations and warranties of Seller or ExchangeCo (other than any representations or warranties contained in Section 3.25 (Taxes) which are subject to Article VI) and all covenants and agreements set forth in this Agreement (other than any covenants or agreements contained in Article VI which are subject to Article VI and other than any covenant or agreement set forth in this Agreement that provides for or contemplates performance following the Closing) shall terminate effective as of and shall not survive the Closing. Notwithstanding the foregoing, nothing in this Article VIII or otherwise will operate to limit the right of any party hereto to bring any claim or cause of action against any Person arising out of any Fraud.

Section 8.02 Limited Indemnification. MJF shall indemnify and hold harmless the Seller and its Affiliates with respect to certain matters, and to the extent, set forth on Schedule C hereto.

ARTICLE IX
TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller, ExchangeCo and Buyer;

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller or ExchangeCo pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Seller or ExchangeCo within ten (10) days of Seller's receipt of written notice of such breach from Buyer;

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date or if the sale and purchase of the Membership Interests contemplated by this Agreement has not been consummated by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(iii) (A) the Seller's Stockholders Meeting (including any adjournments and postponements thereof) has been held and completed and Seller's stockholders have taken a final vote on the Seller Stockholder Matters and (B) the Seller Stockholder Matters have not been approved at the Seller Stockholders Meeting (or any adjournment or postponement thereof) by the Required Seller Stockholder Vote;

(iv) at any time prior to obtaining the Required Seller Stockholder Vote), (A) Seller failed to include the Seller Board Recommendation in the Proxy Statement / Prospectus; (B) Seller's board of directors shall have made a Seller Board Adverse Recommendation Change; (C) Seller's board of directors has approved, endorsed or recommended any Acquisition Proposal; (D) Seller has executed or entered into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Acquisition Proposal; (E) Seller has not held the Seller's Stockholders Meeting by five (5) Business Days prior to the Outside Date; or (F) Seller or any of its Representatives has willfully and intentionally materially breached the provisions set forth in Section 5.03;

(v) Seller's board of directors, prior to obtaining the Required Seller's Stockholder Vote, has determined to make a Seller Board Adverse Change Recommendation under Section 5.14(b) and accept a Superior Offer; or

(vi) if (A) each of the conditions set forth in Section 7.01 and Section 7.03 shall have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing), (B) Buyer shall have notified Seller in writing that it is ready, willing and able to consummate the Closing (and Buyer shall not have revoked such notice) and (iii) Seller and ExchangeCo shall have failed to consummate the Closing within five (5) Business Days of such notice.

(c) by Seller by written notice to Buyer if:

(i) Each of Seller and ExchangeCo is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Buyer within ten (10) days of Buyer's receipt of written notice of such breach from Seller; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date or if the sale and purchase of the Membership Interests contemplated by this Agreement has not been consummated by the Outside Date, unless such failure shall be due to the failure of Seller or ExchangeCo to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(iii) Seller's board of directors, prior to obtaining the Required Seller's Stockholder Vote, has determined to make a Seller Board Adverse Change Recommendation under Section 5.14(b) and accept a Superior Offer; or

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

The party desiring to terminate this Agreement pursuant to this Section 9.01 (other than pursuant to Section 9.01(a)) shall give a notice of such termination to the other Party specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article IX, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) this Article IX and Section 5.06 and Article X shall survive the termination of this Agreement and shall remain in full force and effect; and

(b) that nothing herein shall relieve any party hereto from liability for any material breach of any provision hereof or for Fraud.

Section 9.03 Termination Fee and Expenses. If this Agreement is terminated by Buyer pursuant to Section 9.01(b)(iii), (iv), (v) or (vi) or by Seller pursuant to Section 9.01(c)(iii), then Seller shall:

(a) pay to Buyer a nonrefundable fee in an amount equal to $140,000 within 10 Business Days after such termination (in the case of termination by Buyer) or concurrent with such termination (in the case of termination by Seller) by wire transfer of same-day funds; and

(b) reimburse Buyer for up to a maximum of $60,000 of reasonable fees and expenses incurred by Buyer in connection with this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby within 10 Business Days after the date on which Buyer submits to Seller true and correct copies of reasonable documentation supporting such fees and expenses by wire transfer of same-day funds.

If Seller fails to pay when due any amount payable by Seller under this Section 9.03, then (a) Seller shall reimburse Buyer for reasonable costs and expenses (including reasonable fees and disbursements of counsel) incurred in connection with the collection of such overdue amount and the enforcement by Buyer of its rights under this Section 9.03, and (b) Seller shall pay to Buyer interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to Buyer in full) at a rate per annum equal to the "prime rate" (as announced by Bank of America or any successor thereto) in effect on the date such overdue amount was originally required to be paid.

Seller acknowledges that (i) the agreements contained in this Section 9.03 are an integral part of the transactions contemplated by this Agreement, (ii) without these agreements, Buyer would not enter into this Agreement and (iii) any amount payable pursuant to this Section 9.03 is not a penalty but rather is liquidated damages in a reasonable amount that will compensate Buyer in the circumstances in which such amount is payable.

ARTICLE X
MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller or ExchangeCo:

Akerna Corp.
1550 Larimer St., #246
Denver, Colorado 80202
E-mail: jlb@akerna.com
Attention: Jessica Billinglsey, Chief Executive Officer

with a copy to:

Dorsey & Whitney LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Facsimile: 612.465.4217
E-mail: Brenkert.Jason@dorsey.com;
Bercaw.Chris@dorsey.com
Attention: Jason Brenkert and C. Christopher Bercaw

If to Buyer:

11915 124th Ave NE
Kirkland, WA 98034
Email: ryan@posabit.com
Attn: Chief Executive Officer

with a copy to:

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario, Canada
M5K 0A1
E-mail: eric.foster@dentons.com
Attention: Eric Foster

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 5.07(e), upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Seller or ExchangeCo, assign all or any portion of its rights under this Agreement to one or more of its or its parent's direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as provided in Section 6.03 and Article VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with 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).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE INSTITUTED IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE (OR, IF THE COURT OF CHANCERY OF THE STATE OF DELAWARE DOES NOT HAVE JURISDICTION, ANOTHER STATE COURT LOCATED WITHIN THE STATE OF DELAWARE OR, IF NO STATE COURT LOCATED WITHIN THE STATE OF DELAWARE HAS JURISDICTION, THE FEDERAL DISTRICT COURT FOR THE DISTRICT OF DELAWARE), AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE ASSIGNMENTS OR THE OTHER ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY

LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ASSIGNMENTS, THE OTHER ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.10(c).

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof (without any requirement to post bond), in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 10.13 Disclosure Schedules. All section headings in the Disclosure Schedules correspond to the sections of this Agreement. Unless the context otherwise requires, all capitalized terms used in the Disclosure Schedules shall have the respective meanings assigned to such terms in this Agreement. Certain information set forth in the Disclosure Schedules is included solely for informational purposes, and may not be required to be disclosed pursuant to this Agreement. No disclosure in the Disclosure Schedules relating to any possible breach or violation of any agreement or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The inclusion of any information in the Disclosure Schedules shall not be deemed to be an admission or acknowledgement by Seller or ExchangeCo that in and of itself, such information is material to or outside the ordinary course of business. No disclosure in the Disclosure Schedules shall be deemed to create any rights in any third party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

AKERNA CORP.

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

AKERNA CANADA AMPLE EXCHANGE INC.

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

POSABIT SYSTEMS CORPORATION

By: /s/ Ryan Hamlin
Name: Ryan Hamlin
Title: Chief Executive Officer

Exhibit 2.2

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

AKERNA CORP.,

AKERNA MERGER CO.,

AND

GRYPHON DIGITAL MINING, INC.

DATED AS OF JANUARY 27, 2023

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of January 27, 2023, is made by and among Akerna Corp., a Delaware corporation ("Acquiror"), Akerna Merger Co., a Delaware corporation and wholly owned direct Subsidiary of Acquiror ("Merger Sub"), and Gryphon Digital Mining, Inc., a Delaware corporation (the "Company"). Each of Acquiror, Merger Sub and the Company may be referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, upon the terms and subject to the conditions of this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease and the Company shall be the surviving company and continue its existence under the General Corporation Law of the State of Delaware (as amended, the "DGCL") as a wholly owned subsidiary of Acquiror;

WHEREAS, for U.S. federal income Tax purposes, the Parties intend that the Merger will be treated as a "reorganization" within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code or as an exchange to which Section 351 of the Code applies;

WHEREAS, the board of directors of Acquiror (the "Acquiror Board") has unanimously: (a) determined that this Agreement, the Ancillary Documents and the Transactions are fair to and in the best interests of the Acquiror Stockholders; (b) approved and declared advisable this Agreement, the Ancillary Documents and the Transactions; (c) directed that this Agreement be submitted to the Acquiror Stockholders for adoption; and (d) resolved to recommend to the Acquiror Stockholders adoption of this Agreement and the Ancillary Documents and approval of the Transactions, in each case, in accordance with the DGCL (the "Acquiror Board Recommendation");

WHEREAS, the board of directors of the Company (the "Company Board") has unanimously: (a) determined that this Agreement, the Ancillary Documents and the Transactions are fair to and in the best interests of the Company Stockholders; (b) approved and declared advisable this Agreement, the Ancillary Documents and the Transactions; (c) directed that this Agreement be submitted to the Company Stockholders for adoption; and (d) resolved to recommend to the Company Stockholders adoption of this Agreement and the Ancillary Documents and approval of the Transactions, in each case, in accordance with the DGCL;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and material inducement to Acquiror's and Merger Sub's willingness to enter into this Agreement, the Company is delivering to Acquiror and Merger Sub the Support Agreement, duly executed by the Approving Company Stockholders; and

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and material inducement to the Company's willingness to enter into this Agreement, Acquiror is delivering to the Company (a) the Support Agreement, duly executed by the Aquiror Supporting Stockholders; (b) the Exchange Agreements, duly executed by Acquiror and each Acquiror Convertible Noteholder; and (c) the Side Letters, duly executed by Acquiror and each Acquiror Convertible Noteholder.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, each intending to be legally bound, hereby agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms have the respective meanings set forth below.

"Acquiror Canada Holdco" means Akerna Canada Holdings, Inc., a company existing under the laws of the province of Ontario and wholly owned subsidiary of Acquiror.

"Acquiror Capital Stock" means, collectively, the Acquiror Common Stock and the Acquiror Preferred Stock.

"Acquiror Common Stock" means the common stock, par value $0.0001 per share, of Acquiror.

"Acquiror Common Stockholder" means a holder of Acquiror Common Stock.

"Acquiror Convertible Noteholders" means the holders of the Acquiror Convertible Notes.

"Acquiror Convertible Notes" means the senior secured convertible notes of Acquiror issued on October 5, 2021 with a maturity date of October 5, 2024.

"Acquiror Disclosure Schedules" means the disclosure schedules to this Agreement delivered to the Company by Acquiror on the date of this Agreement.

"Acquiror Employee Benefit Plan" means each compensatory arrangement (including, without limitation, each (a) "employee benefit plan" (as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA); and (b) stock option plan, stock purchase plan, or any other equity or equity-based compensation; bonus or incentive plan; severance pay plan, program, or arrangement; deferred compensation arrangement or agreement; employment agreement; compensation plan, program, agreement, or arrangement; change in control plan, program, or arrangement; supplemental income arrangement; retention; retirement; welfare; vacation; fringe benefit; or other compensation or employee benefit plan, program, policy, agreement, or arrangement not described in (a)) that any Acquiror Group Member maintains, sponsors or contributes to, or has (or could reasonably be expected to have) any obligation to contribute to, or under or with respect to which any Acquiror Group Member has (or could reasonably be expected to have) any Liability, contingent or otherwise (including as an ERISA Affiliate).

"Acquiror Exchange Co." means Akerna Canada Ample Exchange Inc., a company existing under the laws of the Province of Ontario and wholly owned subsidiary of Acquiror Canada Holdco.

"Acquiror Exchangeable Shares" means the redeemable preferred shares of Acquiror Exchange Co., which are exchangeable for Acquiror Common Stock pursuant to the Acquiror Exchangeable Share Support Agreement.

"Acquiror Exchangeable Share Support Agreement" the Exchangeable Share Support Agreement dated July 7, 2020 by and between Acquiror, Acquiror Exchange Co. and Acquiror Canada Holdco.

"Acquiror Fully Diluted Share Number" means, as of immediately prior to the Effective Time, and after giving effect to the Redemptions, the Exchanges and the Reverse Split, the sum of (a) the number of issued and outstanding shares of Acquiror Capital Stock (including all Acquiror Restricted Stock Awards) as of immediately prior to the Effective Time, *plus* (b) the number of shares of Acquiror Common Stock underlying all Acquiror Stock Options outstanding as of immediately prior to the Effective Time, *plus* (c) the number of shares of Acquiror Common Stock underlying all Acquiror Restricted Stock Units outstanding as of immediately prior to the Effective Time,*plus* (d) the number of shares of Acquiror Common Stock underlying all Acquiror Warrants outstanding immediately prior to the Effective Time, *plus* (e) the number of shares of Acquiror Common Stock to be issued upon giving effect to the Post-Closing Exchanges immediately following the Effective Time.

"Acquiror Fundamental Representations" means the representations and warranties set forth in the first sentence of Section 5.1(a) and the second sentence of Section 5.1(c) (Organization and Qualification), Section 5.2 (Capitalization), Section 5.3 (Authority), Section 5.4(a) (SEC Reports), Section 4.5(b)(i) (Consents and Requisite Government Approvals; No Violations), Section 4.19 (Brokers), and Section 5.26 (Sale Transaction and Wind Down).

"Acquiror Group" means Acquiror and its Subsidiaries.

"Acquiror Group Member" means Acquiror or one of its Subsidiaries, as applicable.

"Acquiror Impairment Effect" any Effect that, individually or in the aggregate, would reasonably be expected to prevent or materially impair the ability of the Acquiror Parties to consummate the Transactions.

"Acquiror Intellectual Property" means the Acquiror Owned Intellectual Property and Acquiror Licensed Intellectual Property.

"Acquiror IT Systems" means all information technology assets, Software, computer and information technology systems and infrastructure, servers, networks, devices, mobile devices, databases, websites, computer hardware and equipment, interfaces, platforms, telecommunications systems and related infrastructure and facilities, and peripherals that are owned, licensed, leased, used, or held for use, by any Acquiror Group Member.

"Acquiror Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by any Acquiror Group Member.

"Acquiror Legacy Business" means the provision of software solutions within the cannabis industry.

"Acquiror Licensed Intellectual Property" means Intellectual Property Rights that are licensed, permitted for use or otherwise provided by a third party to any Acquiror Group Member, including, for clarity, all Intellectual Property Rights subject to any Acquiror Inbound Licenses.

"Acquiror Material Adverse Effect" means, any Effect that, individually or in the aggregate with any other Effect, has had or would reasonably be expected to have a material adverse effect on the business, assets, liabilities, operations, results of operations or condition (whether financial or otherwise) of the Acquiror Group, taken as a whole; provided, however, that in no event shall any of the following, alone or in combination, be taken into account in determining whether an Acquiror Material Adverse Effect has occurred or would reasonably be expected to occur: (a) any change in applicable Laws (including Pandemic Measures) or GAAP or any official interpretation thereof after the date of this Agreement, (b) changes in conditions of the financial, banking, capital or securities markets generally in the United States or any other country or region in the world, or changes therein, including changes in interest rates in the United States or any other country and changes in exchange rates for the currencies of any countries, or any change generally affecting the economy or the industry in which any Acquiror Group Member operates, (c) the announcement or the execution of this Agreement, the pendency or consummation of the Merger or the performance of this Agreement, the Ancillary Documents and the Transactions, including the impact thereof on the relationships, contractual or otherwise, of any Acquiror Group Member, with customers, suppliers, licensors, distributors, partners, providers and employees, (d) the compliance with the express terms of this Agreement, the Ancillary Documents and the Transactions or the taking of any action expressly required by this Agreement, the Ancillary Documents and the Transaction; provided, that Acquiror shall have complied with Section 6.1 prior to its compliance with the express terms of the Sale Transaction Agreements or the taking of any action expressly required by the Sale Transaction, (e) any strike, embargo, labor disturbance, riot, protests, cyberterrorism event, earthquake, hurricane, tsunami, tornado,

flood, mudslide, wild fire, meteorological event or other natural disaster, act of God or other force majeure event or any epidemic, disease, outbreak or pandemic (including COVID-19), (f) any national or international political or social conditions in countries in which, or in the proximate geographic region of which, any Acquiror Group Member operates, including the engagement by the United States or such other countries in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist attack upon the United States or such other country, or any territories, possessions, or diplomatic or consular offices of the United States or such other countries or upon any United States or such other country military installation, equipment or personnel, and (g) any failure of the Acquiror Group, taken as a whole, to meet any projections, forecasts or budgets (although the underlying facts and circumstances resulting in such failure may be taken into account to the extent not otherwise excluded from this definition pursuant to clauses (a) through (g)); provided that in the case of clauses (a), (b), (e) and (f) such Effects may be taken into account in determining the existence of an Acquiror Material Adverse Effect to the extent (but only to the extent) that such Effects have had a disproportionate impact on the Acquiror Parties, taken as a whole, as compared to other industry participants in the industries or markets in which Acquiror operates.

"Acquiror Owned Intellectual Property" means all Intellectual Property Rights that are owned or purported to be owned by any Acquiror Group Member, including, for clarity, Acquiror Registered Intellectual Property.

"Acquiror Parties" means Acquiror and Merger Sub, individually and as a group.

"Acquiror PPP Loan" means that certain promissory note issued by Acquiror to KeyBank National Association in the aggregate principal amount of $2,240,600 pursuant to the Paycheck Protection Program under the CARES Act.

"Acquiror Preferred Stock" means the preferred stock, par value $0.0001 per share, of Acquiror.

"Acquiror Preferred Stockholder" means a holder of Acquiror Preferred Stock.

"Acquiror Real Property Leases" means all leases, sub-leases, licenses, sub-licenses or other agreements, in each case, pursuant to which the Acquiror Group leases, sub-leases, uses or occupies any real property and all amendments, modifications and supplements thereto.

"Acquiror Registered Intellectual Property" means all Registered Intellectual Property owned or purported to be owned by any Acquiror Group Member.

"Acquiror Restricted Stock Awards" means awards of restricted shares of Acquiror Common Stock.

"Acquiror Restricted Stock Units" means restricted stock units of Acquiror that may be settled in shares of Acquiror Common Stock.

"Acquiror SEC Reports" means all statements, forms, reports and documents required to be filed or furnished by Acquiror prior to the date of this Agreement with the SEC pursuant to Federal Securities Laws (together with any exhibits and schedules thereto and other information incorporated by reference therein, and as they have been supplemented, modified or amended since the time of filing).

"Acquiror Series A Preferred Stock" means the Series A Convertible Redeemable Preferred Stock, par value $0.0001 per share, of Acquiror.

"Acquiror Series B Preferred Stock" means the Series B Convertible Redeemable Preferred Stock, par value $0.0001 per share, of Acquiror.

"Acquiror Series C Preferred Stock" means the Series C Preferred Stock, par value $0.0001 per share, of Acquiror.

"Acquiror Software" means all proprietary Software owned or purported to be owned by any Acquiror Group Member, including any under development.

"Acquiror Special Voting Share" means the share of Special Voting Preferred Stock, par value $0.0001 per share, of Acquiror.

"Acquiror Stock Options" means options to acquire shares of Acquiror Common Stock from Acquiror.

"Acquiror Stock Plan" means Acquiror's Amended and Restated 2019 Long Term Incentive Plan, as amended from time to time.

"Acquiror Stockholder Approval" means the approval of all Acquiror Stockholder Approval Matters by the holders of the requisite number of shares of Acquiror Capital Stock entitled to vote thereon, in accordance with the Governing Documents of Acquiror, applicable Law and the rules of Nasdaq (the "Approving Acquiror Stockholders").

"Acquiror Stockholder Approval Matters" means, collectively: (a) the Sale Transaction, (b) the issuance of the shares of Acquiror Common Stock comprising the Merger Consideration pursuant to this Agreement; (c) the change of control of Acquiror resulting from the transactions contemplated by this Agreement pursuant to the rules of Nasdaq; (d) the Post-Closing Equity Plan; and (e) the Post-Closing Board Composition; (e) the Reverse Split; (f) an amendment to the Certificate of Incorporation of Acquiror to increase the number of authorized shares of Acquiror Common Stock, to the extent requested by the Company; and (g) an amendment to the Certificate of Incorporation of Acquiror to change the name of Acquiror to a name designated by the Company.

"Acquiror Stockholders" means the Acquiror Common Stockholders and the Acquiror Preferred Stockholders.

"Acquiror Supporting Stockholders" means the Acquiror Stockholders and Acquiror Convertible Noteholders listed on Schedule 1.1 hereto.

"Acquiror Warrants" means warrants to purchase shares of Acquiror Common Stock.

"Acquisition Proposal" means, other than the Transactions and the Sale Transaction, any proposal or offer with respect to any direct or indirect acquisition or purchase or license, in one transaction or a series of transactions, and whether through any merger, reorganization, consolidation, tender offer, self-tender, exchange offer, stock acquisition, asset acquisition, binding share exchange, business combination, recapitalization, liquidation, dissolution, joint venture, licensing or similar transaction, or otherwise, of (a) assets or businesses of the Acquiror Group that generate 10% or more of the net revenues or net income (for the 12-month period ending on the last day of the Acquiror Group's most recently completed fiscal quarter) or that represent 10% or more of the total assets (based on fair market value) of the Acquiror Group immediately prior to such transaction, or (b) 5% or more of any class of capital stock, other equity securities or voting power of Acquiror, any of its Subsidiaries or any resulting parent company of Acquiror, in each case other than the Transactions.

"Adjusted Warrant Share Reserve Number" means the aggregate number of shares of Acquiror Common Stock with respect to which the Adjusted Warrants will be exercisable following consummation of the Merger.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlled" and "controlling" have meanings correlative thereto.

"Ample" means Ample Organics Inc., an Ontario corporation.

"Ancillary Documents" means the Letters of Transmittal, the Support Agreement, the Side Letters, the Exchange Agreements and each other agreement, document, instrument or certificate executed or contemplated by this Agreement to be executed by the Parties in connection with the Transactions.

"Anti-Corruption Laws" means, collectively, (a) the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) and (b) any other applicable anti-bribery or anti-corruption Laws concerning or relating to bribery, corruption, fraud, improper payments and money laundering.

"Applicable Per Share Portion" means, with respect to any share of any class or series of Company Capital Stock, the number of shares of Acquiror Common Stock comprising the Merger Consideration payable in respect of a share of such class and series of Company Capital Stock, as set forth in the Allocation Statement.

"Approving Acquiror Stockholders" has the meaning set forth in the definition of Acquiror Stockholder Approval.

"Approving Company Stockholders" has the meaning set forth in the definition of Company Stockholder Approval.

"Business Data" means all data, information, and works of authorship in any medium collected, generated, or used by the Acquiror Group or the Company Group, as applicable, in the conduct of their respective businesses, including all proprietary information of or relating to the such businesses in the possession, custody, or control of the Acquiror Group or the Company Group, as applicable, or otherwise held or processed on the Acquiror Group's or the Company Group's behalf, as applicable.

"Business Day" means a day, other than a Saturday or Sunday, on which commercial banks in New York, New York are open for the general transaction of business.

"CARES Act" shall mean the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116–13 and any similar or successor legislation, executive order or executive memo relating to the COVID-19 pandemic, as well as any applicable guidance issued thereunder or relating thereto (including, without limitation, IRS Notice 2020-65, 2020-38 IRB, and the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing Covid-19 Disaster, dated August 8, 2020), and any subsequent legal requirement intended to address the consequences of the COVID-19 pandemic, including the Health and Economic Recovery Omnibus Emergency Solutions Act 6.

"COBRA" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code and any similar state Law.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Company Capital Stock" means, collectively, the Company Common Stock and the Company Preferred Stock.

"Company Certificate of Incorporation" means the Second Amended and Restated Certificate of Incorporation of the Company.

"Company Common Share Merger Consideration" means the Applicable Per Share Portion of the Merger Consideration payable in respect of a share of Company Common Stock, as set forth in the Allocation Statement.

"Company Common Stock" means the common stock, par value $0.0001 of the Company.

"Company Disclosure Schedules" means the disclosure schedules to this Agreement delivered to Acquiror by the Company on the date of this Agreement.

"Company Employee Benefit Plan" means each compensatory arrangement (including (a) "employee benefit plan" (as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA); and (b) stock option plan, stock purchase plan, or any other equity or equity-based compensation; bonus or incentive plan; severance pay plan, program, or arrangement; deferred compensation arrangement or agreement; employment agreement; compensation plan, program, agreement, or arrangement; change in control plan, program, or arrangement; supplemental income arrangement; retention; retirement; welfare; vacation; fringe benefit; or other compensation or employee benefit plan, program, policy, agreement, or arrangement not described in (a)) under or with respect to which the Company has any material Liability, contingent or otherwise (including as an ERISA Affiliate).

"Company Fundamental Representations" means the representations and warranties set forth in the first sentence of Section 4.1(a) and the second sentence of Section 4.1(c) (Organization and Qualification), Section 4.2(a) and Section 4.2(b) (Capitalization), Section 4.3 (Authority), Section 4.5(b)(i) (Consents and Requisite Government Approvals; No Violations), and Section 4.19 (Brokers).

"Company Group" means the Company and its Subsidiaries.

"Company Group Member" means the Company or one of its Subsidiaries, as applicable.

"Company Impairment Effect" means any Effect that would, individually or in the aggregate, reasonably be expected to prevent or materially impair the ability of the Company to consummate the Transactions.

"Company Intellectual Property" means the Company Owned Intellectual Property and Company Licensed Intellectual Property.

"Company IT Systems" means all information technology assets, Software, computer and information technology systems and infrastructure, servers, networks, devices, mobile devices, databases, websites, computer hardware and equipment, interfaces, platforms, telecommunications systems and related infrastructure and facilities, and peripherals that are owned, licensed, leased, used, or held for use, by any Company Group Member.

"Company Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures

or other interest in real property held by any Company Group Member.

"Company Licensed Intellectual Property" means Intellectual Property Rights that are licensed, permitted for use or otherwise provided by a third party to any Company Group Member, including, for clarity, all Intellectual Property Rights subject to any Company Inbound Licenses.

"Company Material Adverse Effect" means, any Effect that, individually or in the aggregate, with any other Effect has had or would reasonably be expected to have a material adverse effect on the business, assets, liabilities, operations, results of operations or condition (financial or otherwise) of the Company Group, taken as a whole; provided, however, that in no event shall any of the following, alone or in combination, be taken into account in determining whether a Company Material Adverse Effect has occurred or would reasonably be expected to occur: (a) any change in applicable Laws (including Pandemic Measures) or GAAP or any official interpretation thereof after the date of this Agreement, (b) changes in conditions of the financial, banking, capital or securities markets generally in the United States or any other country or region in the world, or changes therein, including changes in interest rates in the United States or any other country and changes in exchange rates for the currencies of any countries, or any change generally affecting the economy or the industry in which any Company Group Member operates, (c) the announcement or the execution of this Agreement, the pendency or consummation of the Merger or the performance of this Agreement, the Ancillary Documents and the Transactions, including the impact thereof on the relationships, contractual or otherwise, of the Company Group with customers, suppliers, licensors, distributors, partners, providers and employees, (d) the compliance with the express terms of this Agreement, the Ancillary Documents and the Transactions, or the taking of any action expressly required by this Agreement, the Ancillary Documents and the Transactions, (e) any strike, embargo, labor disturbance, riot, protests, cyberterrorism event, earthquake, hurricane, tsunami, tornado, flood, mudslide, wild fire, meteorological event or other natural disaster, act of God or other force majeure event or any epidemic, disease, outbreak or pandemic (including COVID-19), (f) any national or international political or social conditions in countries in which, or in the proximate geographic region of which, any Company Group Member operates, including the engagement by the United States or such other countries in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist attack upon the United States or such other country, or any territories, possessions, or diplomatic or consular offices of the United States or such other countries or upon any United States or such other country military installation, equipment or personnel, and (g) any failure of the Company Group, taken as a whole, to meet any projections, forecasts or budgets (although the underlying facts and circumstances resulting in such failure may be taken into account to the extent not otherwise excluded from this definition pursuant to clauses (a) through (f)); provided that in the case of clauses (a), (b), (e) and (f) such Effects may be taken into account in determining the existence of a Company Material Adverse Effect to the extent (but only to the extent) that such Effects have had a disproportionate impact on the Company Group, taken as a whole, as compared to other industry participants in the industries or markets in which the Company Group operates.

"Company Owned Intellectual Property" means all Intellectual Property Rights that are owned or purported to be owned by any Company Group Member, including, for clarity, Company Registered Intellectual Property.

"Company Preferred Stock" means the preferred stock, par value $0.0001 per share, of the Company.

"Company Real Property Leases" means all leases, sub-leases, licenses, sub-licenses or other agreements, in each case, pursuant to which the Company Group leases, sub-leases, uses or occupies any real property and all amendments, modifications and supplements thereto.

"Company Registered Intellectual Property" means all Registered Intellectual Property owned or purported to be owned by any Company Group Member.

"Company Software" means all proprietary Software owned or purported to be owned by any Company Group Member, including any under development.

"Company Stockholders" means all Persons who hold Company Capital Stock.

"Company Stockholder Approval" means the adoption of this Agreement and the Ancillary Documents, and approval of the Merger, by the holders of the requisite number of shares of Company Capital Stock entitled to vote thereon, in accordance with the Governing Documents of the Company and applicable Law (the "Approving Company Stockholders").

"Company Stockholder Written Consent" means an action by written consent of the Company Stockholders, duly executed by the Approving Company Stockholders, providing the Company Stockholder Approval.

"Company Warrants" means warrants to purchase shares of Company Common Stock.

"Confidentiality Agreement" means that certain Confidentiality Agreement, dated as of August 17, 2022, between Company and Acquiror.

"Consent" means any notice, authorization, qualification, registration, filing, notification, waiver, order, consent, permit, clearance or approval to be obtained from, filed with or delivered to, a Governmental Entity or other Person.

"Contract" or "Contracts" means any agreement, contract, subcontract license, lease, sublease, obligation, undertaking or other commitment or arrangement that is legally binding upon a Person or any of its properties or assets.

"Contractor" means any individual who performed services as an independent contractor, consultant, or freelancer used by any Company Group Member or Acquiror Group Member, as applicable, at any point during the prior three years.

"COVID-19" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemic or disease outbreaks.

"Effect" means any event, change, effect, occurrence, circumstance or development.

"Environmental Laws" means all Laws and Orders concerning pollution, protection of the environment (including natural resources) or human health or safety, or the use, storage, emission, distribution, transport, handling, disposal or release of, or exposure of any Person to, Hazardous Substances.

"Equity Securities" means, with respect to any Person, (a) any share of capital or capital stock, partnership, membership, joint venture or similar interest, or other voting securities of, or other ownership interest in, any such Person, (b) any securities of such Person convertible into or exchangeable for cash or shares of capital or capital stock or other voting securities of, or other ownership interests in, such Person, (c) any warrants, calls, options, contingent value rights or other rights to acquire from such Person, or other obligations of such Person to issue, any shares of capital or capital stock or other voting securities of, or other ownership interests in, or securities convertible into or exchangeable for shares of capital or capital stock or other voting securities of, or other ownership interests in, such Person, (d) any restricted shares, stock appreciation rights, restricted units, performance units, contingent value rights, "phantom" stock, equity or equity-based rights or similar securities or rights issued by or with the approval of

such Person that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any shares of capital or capital stock or other voting securities of, other ownership interests in, or any business, products or assets of, such Person and (e) any securities issued or issuable with respect to the securities or interests referred to in clauses (a) through (d) above in connection with a combination of shares, recapitalization, merger, consolidation or other reorganization.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" means with respect to a Party, any entity, trade or business that is, or at any applicable time was, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes such Party.

"Ex-Im Laws" means all U.S. and non-U.S. Laws relating to export, reexport, transfer, and import controls, including the Arms Export Control Act (22 U.S.C. § 1778), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706), the Export Control Reform Act (50 U.S.C. §§ 4801-4852), Section 999 of the Internal Revenue Code, Title 19 of the U.S. Code, the Export Administration Regulations (15 C.F.R. Parts 730-774), the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), the U.S. customs regulations (19 C.F.R. Chapter 1), the Foreign Trade Regulations (15 C.F.R. Part 30), and EU Council Regulation No. 2021/821.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Agreements" means the Exchange Agreements, dated the date hereof, by and between Acquiror and each holder of an Acquiror Convertible Note, in the form attached hereto as Annex A.

"Exchanges" means (i) the exchange of certain principal amounts outstanding under the Acquiror Convertible Notes for shares of Acquiror Series C Preferred Stock in accordance with the Exchange Agreements, and (ii) the exchange or redemption of all issued and outstanding Acquiror Exchangeable Shares for shares of Acquiror Common Stock.

"Federal Securities Laws" means U.S. federal securities laws and the rules and regulations of the SEC promulgated thereunder, as now in effect and as they may be promulgated or amended from time to time, and includes the rules and policies of Nasdaq that are applicable to Acquiror.

"Fraud" with respect to any Party, means actual common law fraud by such Party, as determined under the Laws of the State of Delaware, through the making of a specific representation or warranty expressly set forth in Article 4 or Article 5 of this Agreement, as applicable, or any certificate delivered hereunder.

"GAAP" means United States generally accepted accounting principles.

"Governing Documents" means the legal document(s) by which any Person (other than an individual) establishes its legal existence or other organizational documents of such Person. For example, the "Governing Documents" of a U.S. corporation are its certificate or articles of incorporation (including certificates of designation of preferred stock) and by-laws, the "Governing Documents" of a U.S. limited partnership are its limited partnership agreement and certificate of limited partnership, the "Governing Documents" of a U.S. limited liability company are its operating or limited liability company agreement and certificate of formation.

"Governmental Entity" means any (a) federal, state, local, municipal, provincial, transnational or other government, (b) governmental or quasi-governmental entity of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), (c) body exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal (public or private) or (d) self-regulatory organization or securities exchange, including Nasdaq.

"Hazardous Substance" means material, substance or waste that is listed, regulated, or otherwise defined as "hazardous," "toxic," or "radioactive," or as a "pollutant" or "contaminant" (or words of similar intent or meaning), or for which standards of conduct or Liability may be imposed, under Environmental Laws, including petroleum, petroleum by-products, mold, asbestos or asbestos-containing material, polychlorinated biphenyls, per- and polyfluoroalkyl substances, flammable or explosive substances, or pesticides.

"Indebtedness" means, with respect to any Person as of any time, without duplication, (a) the outstanding principal amount of and accrued and unpaid interest on, and other payment obligations for, all indebtedness for borrowed money of such Person or indebtedness issued by such Person in substitution or exchange for borrowed money, (b) all indebtedness evidenced by any note, bond, debenture, mortgage or other debt instrument or debt security, in each case, as of such time of such Person, (c) all obligations for the deferred purchase price of businesses, property or assets, including "earn-outs," "seller notes" and all other forms of contingent or deferred consideration, or other services (other than trade payables incurred in the ordinary course of business that are not past due), (d) all obligations as lessee that are required to be capitalized in accordance with GAAP, (e) all obligations of such Person for the reimbursement of any obligor on any line or letter of credit, banker's acceptance, guarantee or similar credit transaction, in each case, that has been drawn or claimed against, (f) all interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by such Person, whether periodically or upon the happening of a contingency, (g) any premiums, prepayment fees or other penalties, fees, costs or expenses associated with payment of any Indebtedness of such Person and (h) all obligations of the type referred to in clauses (a) through (g) of this definition of any other Person, the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including any guarantee of such obligations.

"Intellectual Property Rights" means all intellectual property and other proprietary rights (including with respect to technology) created, arising, or protected under applicable Law (or any other similar statutory provision or common law doctrine in the United States or anywhere else in the world), including all: (a) patents, patent applications, patent disclosures, and inventions and all improvements thereto (whether or not patentable or reduced to practice), and all reissues, continuations, continuations-in-part, revisions, divisional, extensions, and reexaminations in connection therewith (collectively, "Patents"); (b) trademarks, service marks, trade names, service names, trade dress and logos, together with the goodwill of the business associated with any of the foregoing, and all applications, registrations, extensions and renewals of any of the foregoing (collectively, "Marks"); (c) copyrights and all works of authorship, whether or not registered, and all registrations, applications, renewals, extensions and reversions of any of any of the foregoing (collectively, "Copyrights"); (d) internet domain names; (e) intellectual property rights in Software; and (f) trade secrets, and any other intellectual property and proprietary rights in know-how, technologies, data, databases, processes, techniques, protocols, methods, formulae, algorithms, layouts, designs, specifications and confidential and proprietary information.

"Law" means any federal, state, local, foreign, national or supranational statute, law (including common law), act, ordinance, treaty, rule, code, regulation or other binding directive issued, promulgated or enforced by a Governmental Entity.

"Letter of Transmittal" means a letter of transmittal in form and substance reasonably acceptable to Acquiror and the Company.

"Liability" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or

determined or determinable, including those arising under any Law, Proceeding or Order and those arising under any Contract.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, security interest, encumbrance, lien, easement, license or sub-license, charge, option, right of first refusal, or other similar encumbrance or interest (including, in the case of any Equity Securities, any voting, transfer or similar restrictions).

"Marks" has the meaning set forth in the definition of Intellectual Property Rights.

"Merger Consideration" means a number of shares of Acquiror Common Stock equal to (a) the quotient obtained by dividing (i) the Acquiror Fully Diluted Share Number by (ii) 0.075, *minus* (b) the Acquiror Fully Diluted Share Number *minus* (c) the Adjusted Warrant Share Reserve Number.

"MJF" means MJ Freeway, LLC, a Colorado limited liability company.

"MJF Purchaser" means POSaBIT Systems Corporation, a British Columbia corporation.

"Multiemployer Plan" has the meaning set forth in Sections 3(37) or 4001(a)(3) of ERISA.

"Nasdaq" means The Nasdaq Capital Market.

"Nasdaq Listing Application" means an application to list the shares of Acquiror Common Stock comprising the Merger Consideration, and to continue to list the Acquiror Common Stock, on Nasdaq following the consummation of the Merger and the other Transactions.

"Nasdaq Approval" means approval from Nasdaq for the continued listing of the Acquiror Common Stock (including the shares of Acquiror Common Stock comprising the Merger Consideration) on Nasdaq following the consummation of the Merger and the other Transactions (subject to official notice of issuance).

"Order" means any outstanding writ, order, judgment, injunction, decision, determination, award, ruling, subpoena, verdict or decree entered, issued or rendered by any Governmental Entity.

"Pandemic Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, sequester or any other Law, directive, guidelines or recommendations by any Governmental Entity in each case in connection with or in response to COVID-19, including the CARES Act.

"Patents" has the meaning set forth in the definition of Intellectual Property Rights.

"Permits" means any approvals, authorizations, clearances, licenses, registrations, permits or certificates of a Governmental Entity.

"Permitted Liens" means (a) statutory or common law Liens of mechanics, materialmen, warehousemen, landlords, carriers, repairmen, construction contractors and other similar Liens that arise in the ordinary course of business, that relate to amounts not yet due and payable or that are being contested in good faith through appropriate Proceedings, in each case only to the extent appropriate reserves have been established in accordance with GAAP, (b) Liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business, (c) Liens for Taxes not yet due and payable, (d) all exceptions and exclusions set forth in any title reports or commitments with respect to the Real Property, and (e)(i) matters that would be disclosed by an inspection or accurate survey of the Real Property, (ii) all building, land use, entitlement and zoning codes, Environmental Laws and other applicable Laws heretofore, now or hereafter enacted, made or issued, (iii) all matters of title that are recorded, and (iv) other Liens, encumbrances and restrictions on real property (including easements, covenants, rights of way and similar restrictions) of record that, as to subclauses (i), (ii), (iii) and (iv), (A) do not or would not, individually or in the aggregate, materially interfere with the uses or occupancy of such real property as such real property is currently used or occupied, and (B) do not or would not, individually or in the aggregate, materially detract from the current value of such real property.

"Person" means an individual, partnership, corporation, limited liability company, joint stock company, unincorporated organization or association, trust, joint venture or other similar entity, whether or not a legal entity.

"Post-Closing Board Composition" means the composition of the Acquiror Board immediately following the Closing as set forth in Section 6.13.

"Post-Closing Equity Plan" means the 2022 Omnibus Incentive Plan of Acquiror, to be effective immediately following the Closing, in the form attached hereto as Annex B.

"Post-Closing Exchanges" means the exchange or redemption of all issued and outstanding shares of Acquiror Series C Preferred Stock, and all amounts outstanding under the Acquiror Convertible Notes, for shares of Acquiror Common Stock, with such exchanges to be effective immediately following the Effective Time, in accordance with the Governing Documents of Acquiror, the Acquiror Convertible Notes and the Exchange Agreements.

"Proceeding" means any lawsuit, litigation, action, proceeding, suit, investigation, arbitration or mediation (in each case, whether civil, criminal or administrative and whether public or private) pending by or before any Governmental Entity.

"Process" (or "Processing" or "Processes") means any operation or set of operations, such as the collection, recording, organization, use, storage, adaptation or alteration, retrieval, consultation, recording, distribution, transfer, import, export, disposal, disclosure, dissemination or otherwise making available, alignment or combination, blocking, erasure, or destruction, performed upon Business Data, whether electronically, automatically, or in any other form or medium.

"Redemptions" means the redemption by Acquiror of all issued and outstanding shares of Acquiror Series A Preferred Stock and Acquiror Series B Preferred Stock prior to the Effective Time in accordance with the Governing Documents of Acquiror and applicable Law.

"Registered Intellectual Property" means all currently issued Patents, pending Patent applications, registered Marks, pending applications for registration of Marks, registered Copyrights, pending applications for registration of Copyrights, and Internet domain name registrations and all other Intellectual Property Rights registered or applied for with a Governmental Entity (e.g., USPTO, WIPO, etc.).

"Representatives" means with respect to a Person, such Person's directors or managers, officers, employees, and legal, financial, internal and independent accounting and other advisors and representatives.

"Reverse Split" means a reverse stock split of all outstanding shares of Acquiror Capital Stock (after consummation of the Redemptions at a reverse stock split ratio between 1-for-2 and 1-for-20, to be agreed between the Company and Acquiror. The ratio of the Reverse Split shall be determined taking into account the anticipated effect of the Post-Closing Exchanges.

"Sale Transaction Agreements" means all of the definitive Contracts governing the Sale Transaction.

"Sale Transaction" means the sale by Acquiror to the MJF Purchaser of MJF and Ample, such Sale Transaction to close concurrent with the Merger.

"Sanctions Laws" means all U.S. and non-U.S. Laws relating to economic or trade sanctions, including the Laws and regulations administered or enforced by the United States (including by the U.S. Department of the Treasury, Office of Foreign Assets Control or the U.S. Department of State), the United Nations Security Council, the European Union, and the United Kingdom.

"Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002.

"Schedules" means, collectively, the Company Disclosure Schedules and the Acquiror Disclosure Schedules.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Security Incident" means (a) any unauthorized access, acquisition, interruption, alteration or modification, loss, theft, corruption or other unauthorized Processing of Business Data, (b) inadvertent, unauthorized, or unlawful sale or rental of Business Data, or (c) any breach of the security of or other unauthorized access to or use of or other compromise to the integrity or availability of the Company IT Systems or the Acquiror IT Systems, as applicable.

"Securities Laws" means Federal Securities Laws and other applicable foreign and domestic securities or similar Laws.

"Side Letter" means the Letter Agreements, dated the date hereof, by and between Acquiror and each holder of an Acquiror Convertible Note, in the form attached hereto as Annex C.

"Software" means any and all (a) computer programs (including any and all software implementations of algorithms, models and methodologies), assemblers, applets, compilers, interfaces, applications, utilities, diagnostics and embedded systems, tools, firmware, and computations, each of the forgoing in any form or format; and (b) documentation related to the foregoing, such as user manuals, training materials, flowcharts, and other work product used to design, plan, organize, develop or operate any of the foregoing and, to the extent embodied in any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other legal entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of the partnership or other similar ownership interests thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes of the preceding clause (b), a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be a, or control any, managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"Superior Proposal" means any unsolicited bona fide binding written Acquisition Proposal that is fully financed or has fully committed financing that the Acquiror Board determines in good faith (after consultation with outside counsel and its financial advisor), taking into account all legal, financial, regulatory and other aspects of the proposal and the Person making the proposal, is (a) more favorable to the Acquiror Stockholders from a financial point of view than the Transactions (including any adjustment to the terms and conditions proposed by the Company in response to such proposal) and (b) reasonably likely of being completed on the terms proposed on a timely basis; provided, that, for purposes of this definition of "Superior Proposal," references in the term "Acquisition Proposal" to "5%" or "10%" shall be deemed to be references to "all or substantially all".

"Support Agreements" means the Support Agreements, dated the date hereof, by and between (a) Acquiror and the Approving Company Stockholders and (b) the Company and the Acquiror Supporting Stockholders, in the form attached hereto as Annex D.

"Tax" means any federal, state, local, non-U.S. or other income, gross receipts, franchise, estimated, alternative minimum, sales, use, transfer, production, service use, environmental, value added, excise, stamp, customs, duties, ad valorem, real property, personal property (tangible and intangible), real property gains, capital stock, social security, unemployment, payroll, wage, employment, severance, occupation, registration, communication, mortgage, profits, license, lease, service, goods and services, withholding, premium, turnover, escheat, unclaimed property, windfall profits or other taxes of any kind whatsoever, or any fee, assessment or charge of any kind in the nature of (or similar to) taxes, whether computed on a separate or combined, unitary or consolidated basis or in any other manner, together with any interest, deficiencies, penalties, additions to tax, or additional amounts imposed by any Governmental Entity with respect thereto, whether disputed or not.

"Tax Authority" means any Governmental Entity responsible for the assessment, collection or administration of Taxes or Tax Returns.

"Tax Return" means returns, information returns, statements, declarations, reports, claims for refund and any other documents relating to Taxes, together with any schedules or attachments thereto or amendments thereof, relating to Taxes filed or required to be filed with any Governmental Entity.

"Termination Date" means July 15, 2023; provided, however, if the SEC has not declared effective under the Securities Act the Form S-4 by May 15, 2023, then either Acquiror or the Company shall be entitled to extend the Termination Date by up to 60 days by providing written notice to the other.

"Transactions" means the transactions contemplated by this Agreement and the Ancillary Documents, including the Merger, the Sale Transaction, the Wind Down, the Redemptions, the Exchanges, the Post-Closing Exchanges and the Reverse Split.

"Transfer Tax" means any direct or indirect transfer (including real estate transfer), sales, use, stamp, documentary, registration, conveyance, recording, or other similar Taxes or governmental fees (and any interest, penalty, or addition with respect thereto) payable as a result of the consummation of the Transactions.

"WARN Act" means the Worker Adjustment Retraining and Notification Act of 1988, as well as analogous applicable foreign, state or local Laws.

"Willful Breach" means an intentional and willful breach, or an intentional and willful failure to perform, in each case that is the consequence of an act or omission by

a Party with the knowledge that the taking of such act or failure to take such act would cause a breach of this Agreement.

"Wind Down" means the winding down of the Acquiror Legacy Business following consummation of the Sale Transaction, which shall include the divestiture by the Acquiror Group Members of all assets used or held for use in the Acquiror Legacy Business that are not sold in the Sale Transaction, and the payment and satisfaction of all Liabilities of the Acquiror Group Members arising out of, resulting from or relating to the Acquiror Legacy Business that are not transferred in the Sale Transaction.

Section 1.2 Certain Defined Terms. Each of the following terms is defined in the Section set forth opposite such term:

Acquiror Capitalization Freeze Date	3.3(a)
Acquiror D&O Persons	6.11
Acquiror Inbound Licenses	5.12(c)
Acquiror Material Contractor	4.16(i)
Acquiror Material Contracts	5.7(a)
Acquiror Related Party	5.21
Acquiror Related Party Transactions	5.21
Acquiror Stock Awards	5.2(b)
Acquiror Subsidiaries	5.1(a)
Adjusted Warrant	3.1(b)
Adverse Recommendation Change	6.6(b)(i)
Allocation Statement	3.3(b)
Alternative Acquisition Agreement	6.6(b)(ii)
Annual Company Financial Statements	4.4(a)
Bridge Note	6.17(a)
Certificate of Merger	2.1(a)
Closing	2.3
Closing Date	2.3
Closing Press Release	6.4(b)
Company Business	8.4(a)
Company Capitalization Freeze Date	3.3(b)
Company D&O Persons	6.12(a)
Company Financial Statements	4.4(a)
Company Inbound Licenses	4.12(c)
Company Material Contractor	4.16(i)
Company Material Contracts	4.7(a)
Company Material Customers	4.22(a)
Company Material Permits	4.6
Company Material Suppliers	4.22(b)
Company Related Party	4.21
Company Related Party Transactions	4.21
Company Stockholders Meeting	6.8(a)
Company Subsidiaries	4.1(c)
Effective Time	2.3
Exchange Agent	3.4(a)
Expense Financing	6.17(b)
Form S-4	6.8(a)
Intended Tax Treatment	6.5(a)
Interim Company Financial Statements	4.4(a)
Knowledge of Acquiror	9.12
Knowledge of Company	9.12
Merger	1.1(a)
Merger Consideration Statement	3.3(a)
Pre-Closing Financing	6.17(a)
Proxy Statement	6.8(a)
Reimbursed Expenses	8.3(b)
Restricted Period	8.4(a)
Restricted Territory	8.4(a)
Retained Legacy Assets	5.26(a)
Section 16(b)	6.14
Signing Press Release	6.4(b)
Surviving Company	2.1(b)
Takeover Laws	5.23(a)
Termination Fee	8.3(a)
Transaction Litigation	6.16
Unknown Retained Liabilities	5.26(b)

ARTICLE 2
MERGER; CLOSING

Section 2.1 Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company,

with the Company being the surviving company (the "Merger"). The Merger shall be evidenced by a Certificate of Merger between Merger Sub and the Company in substantially the form of Annex E hereto (the "Certificate of Merger").

(b) Upon consummation of the Merger at the Effective Time, the separate corporate existence of Merger Sub shall cease and the Company, as the surviving company of the Merger (the "Surviving Company"), shall continue its corporate existence under the DGCL.

Section 2.2 Effects of the Merger. From and after the Effective Time, the Surviving Company shall possess all the rights, powers, privileges and franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of Merger Sub and the Company, all as provided under the DGCL.

Section 2.3 Closing; Effective Time. Subject to the terms and conditions of this Agreement, the closing of the Merger (the "Closing") shall take place by electronic exchange of fully-executed agreements, commencing at 10:00 a.m., New York City time, on the date which is not later than three Business Days after the date on which all conditions set forth in Article 7 shall have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or such other date, time and place as Acquiror and the Company may mutually agree. The date on which the Closing actually occurs is referred to in this Agreement as the "Closing Date". Subject to the satisfaction or waiver of all of the conditions set forth in Article 7, the Acquiror Parties and the Company shall cause the Certificate of Merger to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the DGCL on the Closing Date. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later time as may be agreed by Acquiror and the Company in writing and specified in the Certificate of Merger (the "Effective Time").

Section 2.4 Certificate of Incorporation and Bylaws of the Surviving Company. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub or the Company, the certificate of incorporation of the Company shall be amended and restated substantially in the form attached hereto as Annex F, the bylaws of the Company shall be amended and restated in the form attached hereto as Annex G, and each shall be the certificate of incorporation and bylaws of the Surviving Company until thereafter amended as provided therein and under the DGCL.

Section 2.5 Directors and Officers of the Surviving Company. At the Effective Time, the members of the Company Board immediately prior to the Effective Time shall comprise the board of directors of the Surviving Company, each to hold office until the earlier of his or her resignation or removal or he or she otherwise ceases to be an director, or until his or her respective successor is duly elected and qualified, as the case may be. The officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Company, each to hold office until the earlier of his or her resignation or removal, or he or she otherwise ceases to be an officer or until his or her respective successor is duly elected and qualified, as the case may be.

Section 2.6 Corporate Name Change. Immediately following the Effective Time, Acquiror shall file an amendment to its Certificate of Incorporation to change its name to a name designated by the Company.

ARTICLE 3
EFFECTS OF THE MERGER ON EQUITY SECURITIES

Section 3.1 Conversion of Company Capital Stock; Company Warrants.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the Acquiror Parties, the Company or any Company Stockholder, each share of Company Capital Stock that is issued and outstanding immediately prior to the Effective Time shall automatically be converted into and become the right to receive the Applicable Per Share Portion of the Merger Consideration with respect to such share of Company Capital Stock as set forth in the Allocation Statement. As of the Effective Time, all such shares of Company Capital Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each Holder shall thereafter cease to have any rights with respect thereto, except the right to receive the consideration set forth in this Section 3.1(a).

(b) At the Effective Time, by virtue of the Merger and without any action on the part of the Acquiror Parties, the Company, any Company Stockholder or the holder of any Company Warrant, each Company Warrant that is issued and outstanding immediately prior to the Effective Time shall automatically be assumed by Acquiror and shall become a warrant to acquire, on the same terms and conditions as were applicable under such Company Warrant, such number of shares of Acquiror Common Stock as is equal to the number of shares of Company Common Stock subject to the unexercised portion of the Company Warrant immediately prior to the Effective Time multiplied by the Company Common Share Merger Consideration (rounded down to the nearest whole share number), at an exercise price per share equal to the exercise price per share of such Company Warrant immediately prior to the Effective Time divided by the Company Common Share Merger Consideration (rounded up to the nearest whole cent) (each such Company Warrant, as so adjusted, an "Adjusted Warrant"). The Company shall, prior to the Effective Time, take all actions necessary or desirable in connection with the treatment of the Company Warrants contemplated by this Section 3.1(b). Acquiror shall take all corporate actions necessary to reserve a number of shares of Acquiror Common Stock equal to the Adjusted Warrant Share Reserve Number, for issuance upon exercise of the Adjusted Warrants.

Section 3.2 Merger Sub Interests. At the Effective Time, by virtue of the Merger and without any action on the part of the Acquiror Parties or the Company, each issued and outstanding share of capital stock of Merger Sub shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.0001 per share, of the Surviving Company.

Section 3.3 Acquiror Fully Diluted Share Number Calculation; Allocation Statement.

(a) No later than 5:00 p.m., New York City time, on the Business Day prior to the Closing Date, Acquiror shall deliver to the Company a statement (the "Merger Consideration Statement") setting forth its calculation of the Acquiror Fully Diluted Share Number and the Merger Consideration, together with reasonable supporting documentation (which shall include (i) a certificate of Acquiror's transfer agent as to the number of shares of Acquiror Capital Stock (including all Acquiror Restricted Stock Awards) outstanding as of such date, after giving effect to the Reverse Split, the Exchanges and the Redemptions, and (ii) a true, correct and complete ledger of all outstanding Acquiror Stock Options, Acquiror Restricted Stock Units and Acquiror Warrants, certified by the Chief Financial Officer of Acquiror). The date on which the Merger Consideration Statement is delivered pursuant to this Section 3.3(a) is referred to herein as the "Acquiror Capitalization Freeze Date."

(b) No later than 7:00 p.m., New York City time, on the Business Day prior to the Closing Date, the Company shall deliver to Acquiror an allocation statement (the "Allocation Statement") setting forth (a) the Applicable Per Share Portion of the Merger Consideration attributable to a share of each class or series of Company Capital Stock, and (b) an allocation of the Merger Consideration among the Company Stockholders. Notwithstanding anything to the contrary in this Agreement, the Acquiror Parties and, following the Closing, the Surviving Company and its Subsidiaries, shall be entitled to rely on, without any obligation to investigate or verify the accuracy or correctness thereof, the Allocation Statement (including all determinations therein), and no Company Stockholder shall be entitled to any amount in excess of the amounts to be paid to such Company Stockholder in accordance with this Agreement and the Allocation Statement. The Allocation Statement shall be prepared in accordance with the Company Certificate of Incorporation. The date on which the Allocation Statement is delivered pursuant to this Section 3.3(b) is referred to herein as the "Company Capitalization Freeze Date."

Section 3.4 Payment; Letter of Transmittal.

(a) At or promptly following the Effective Time, Acquiror shall deposit, or cause to be deposited, with an exchange agent (the "Exchange Agent") as mutually agreed by Acquiror and the Company, evidence of shares of Acquiror Common Stock (which may include direct registration advice slips and/or certificates representing such shares of Acquiror Common Stock, at Acquiror's election) representing the number of shares of Acquiror Common Stock sufficient to deliver the Merger Consideration.

(b) At least three Business Days prior to the Closing Date, the Company or the Exchange Agent shall mail or otherwise deliver to each Company Stockholder a Letter of Transmittal. No Company Stockholder shall be entitled to receive any portion of the Merger Consideration unless such Company Stockholder has delivered a properly completed and executed Letter of Transmittal (including any required certifications) to the Exchange Agent. With respect to any Company Stockholder that delivers a properly completed and executed Letter of Transmittal (including any required certifications) to the Exchange Agent at or prior to the Effective Time, Acquiror shall instruct the Exchange Agent to issue such Company Stockholder the portion of the Merger Consideration to which such Company Stockholder is entitled pursuant to Section 3.1 at or promptly after the Closing. With respect to any Company Stockholder that delivers a properly completed and executed Letter of Transmittal to the Exchange Agent after the Effective Time, Acquiror shall instruct the Exchange Agent to issue such Company Stockholder the portion of the Merger Consideration to which such Company Stockholder is entitled pursuant to Section 3.1 promptly following the Exchange Agent's receipt of such documents. From and after the Effective Time, there shall be no further registration of transfers of Company Capital Stock on the transfer books of the Surviving Company.

(c) If any Merger Consideration is to be issued to a Person other than the Company Stockholder in whose name the applicable Company Capital Stock is registered, it shall be a condition to the issuance of such Merger Consideration that (i) such Company Capital Stock shall have been properly transferred and (ii) the Person requesting such consideration pay to the Exchange Agent any transfer or similar Taxes required as a result of such consideration being issued to a Person other than the registered holder of Company Capital Stock or establish to the satisfaction of the Exchange Agent that such transfer or similar Taxes have been paid or are not payable.

(d) No interest will be paid or accrued on the Merger Consideration (or any portion thereof). From and after the Effective Time, until surrendered in accordance with this Section 3.4, each share of Company Capital Stock shall solely represent the right to receive the Merger Consideration to which such share of Company Capital Stock is entitled to receive pursuant to Section 3.1.

(e) Notwithstanding anything to the contrary contained herein, no fraction of a share of Acquiror Common Stock will be issued by virtue of this Agreement or the transactions contemplated hereby, and each Person who would otherwise be entitled to a fraction of a share of Acquiror Common Stock (after aggregating all shares of Acquiror Common Stock to which such Person otherwise would be entitled) shall instead have the number of shares of Acquiror Common Stock issued to such Person rounded down to the nearest whole share of Acquiror Common Stock.

Section 3.5 Exchange Agent. Promptly following the earlier of (a) the date on which the entire Merger Consideration has been issued and (b) the date that is 24 months after the Effective Time, Acquiror shall instruct the Exchange Agent to deliver to Acquiror any remaining portion of the Merger Consideration, Letters of Transmittal, and other documents in its possession relating to the Transactions, and the Exchange Agent's duties shall terminate. Thereafter, each Company Stockholder may look only to Acquiror (subject to applicable abandoned property, escheat or other similar Laws), as general creditors thereof, for satisfaction of its claim for Merger Consideration that such Company Stockholder may have the right to receive pursuant to this Article 3 without any interest thereon.

Section 3.6 No Liability; Withholding.

(a) None of Acquiror, the Surviving Company or the Exchange Agent shall be liable to any Person for any portion of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Notwithstanding any other provision of this Agreement, any portion of the Merger Consideration that remains undistributed to the Company Stockholders as of immediately prior to the date on which the Merger Consideration would otherwise escheat to or become the property of any Governmental Entity shall, to the extent permitted by applicable Law, become the property of the Surviving Company, free and clear of all claims or interest of any Person previously entitled thereto.

(b) Notwithstanding anything herein to the contrary, each of Acquiror, Merger Sub, the Surviving Company and the Exchange Agent (without duplication) and any of their Affiliates shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to the making of such payment under any applicable Law. Any amounts so deducted and withheld shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY

Subject to Section 9.8, except as set forth in the Company Disclosure Schedules, the Company hereby represents and warrants to the Acquiror Parties, as of the date of this Agreement and as of the Closing Date, as follows:

Section 4.1 Organization and Qualification.

(a) The Company has been duly incorporated, is validly existing as a corporation and is in good standing under the Laws of the State of Delaware and has the power and authority to own, operate and lease its properties, rights and assets and to carry on its business as presently conducted. True and complete copies of the Governing Documents of each Company Group Member have been made available to Acquiror, in each case, as amended and in effect as of the date of this Agreement. The Governing Documents of each Company Group Member are in full force and effect, and no Company Group Member is in breach or violation of any provision set forth in its Governing Documents.

(b) The Company is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof, if applicable, in each case, with respect to the jurisdictions that recognize the concept of good standing or any equivalent thereof) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of its business, makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, be reasonably expected to have a Company Material Adverse Effect or a Company Impairment Effect.

(c) The Subsidiaries of the Company, together with details of their respective jurisdiction of incorporation or organization, are set forth on Section 4.1(c) of the Company Disclosure Schedules (the "Company Subsidiaries"). The Company Subsidiaries have been duly formed or organized, are validly existing under the laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, operate and lease their properties, rights and assets and to conduct their business as it is now being conducted. Each Company Subsidiary is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof, if applicable, in each

case, with respect to the jurisdictions that recognize the concept of good standing or any equivalent thereof) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of the business conducted by it, makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, be reasonably expect to have a Company Material Adverse Effect or a Company Impairment Effect.

Section 4.2 Capitalization.

(a) Section 4.2(a) of the Company Disclosure Schedules sets forth, as of the date of this Agreement, a true and complete statement of (i) the number and class or series (as applicable) of all of the Equity Securities of each Company Group Member authorized and issued and outstanding, and (ii) the identity of the Persons that are the record and beneficial owners thereof. All of the outstanding shares of Company Capital Stock and all outstanding Equity Securities of the Company Subsidiaries have been duly authorized and validly issued and are fully paid and, in the case of any Company Subsidiary that is a corporation, non-assessable. Except as set forth on Section 4.2(a) of the Company Disclosure Schedules, there are no Equity Securities of any Company Group Member authorized, reserved, issued or outstanding. The outstanding shares of Company Capital Stock and all outstanding Equity Securities of the Company Subsidiaries (A) were not issued in violation of the Governing Documents of any Company Group Member or any other Contract to which any Company Group Member is party or bound, (B) were not issued in violation of any preemptive rights, call option, right of first refusal or first offer, subscription rights, transfer restrictions or similar rights of any Person, (C) have been offered, sold and issued in compliance with applicable Law, including applicable Securities Laws, and (D) are free and clear of all Liens (other than transfer restrictions under applicable Securities Law and the applicable Company Group Member's Governing Documents). Except as set forth in Section 4.2(a) of the Company Disclosure Schedules, no Company Group Member has any outstanding, or is a party to, any (x) equity appreciation or profit participation rights or (y) options, restricted stock, profits interests, phantom stock, warrants, bonds, notes, debentures or other instruments of Indebtedness, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts, rights of first refusal or first offer or other Contracts, in the case of each of clause (x) and (y), that would require any Company Group Member to issue, sell or otherwise cause to become outstanding or to acquire, repurchase or redeem any Equity Securities or securities convertible into or exchangeable for Equity Securities of any Company Group Member. There are no Equity Securities, instruments of Indebtedness or other rights or Contracts that entitle the holder thereof to vote on any matter submitted to the equity holders of any Company Group Member except as set forth on Section 4.2(a) of the Company Disclosure Schedules. Except as set forth in the Governing Documents of the Company Group Members, no Person is entitled to any preemptive or similar rights to subscribe for Equity Securities of any Company Group Member. No Company Group Member is a party to any voting trusts, proxies or other Contracts with respect to the voting or transfer of any Company Capital Stock (other than the Governing Documents of the Company) or any Equity Securities of any Company Subsidiary.

(b) Except as set forth on Section 4.2(b) of the Company Disclosure Schedules, no Company Group Member owns or holds (of record, beneficially, legally or otherwise), directly or indirectly, any Equity Securities in any Person or the right to acquire any such Equity Securities, and no Company Group Member is a partner or member of any partnership, limited liability company or joint venture (other than any other Company Group Member).

(c) Assuming the Merger Consideration Statement to be delivered by Acquiror to the Company pursuant to Section 3.3(a) is accurate and complete, the Allocation Statement to be delivered by the Company to Acquiror pursuant to Section 3.3 will also be true, correct and complete when so delivered.

Section 4.3 Authority.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Document to which it is or will be a party, to perform its obligations hereunder and thereunder, and to consummate the Transactions. The execution and delivery of this Agreement, the Ancillary Documents to which the Company is or will be a party and the consummation of the Transactions have been duly authorized by the board of directors of the Company and the Company Stockholders, and no other corporate action on the part of any Company Group Member is necessary to authorize the execution and delivery by the Company of this Agreement or the Ancillary Documents to which the Company is (or will be) a party, the performance by the Company of its obligations hereunder and thereunder and the consummation of the Transactions. This Agreement and each Ancillary Document to which the Company is or will be a party has been or will be, upon execution thereof, as applicable, duly and validly executed and delivered by the Company and constitutes or will constitute, upon execution and delivery thereof, as applicable, a valid, legal and binding agreement of the Company (assuming that this Agreement and the Ancillary Documents to which the Company is or will be a party are or will be upon execution thereof, as applicable, duly authorized, executed and delivered by the other Persons party hereto or thereto, as applicable), enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting generally the enforcement of creditors' rights and subject to general principles of equity ("Enforceability Exceptions").

(b) At a meeting duly called and held, the Company Board unanimously (i) determined that this Agreement, the Ancillary Documents and the Transactions are fair to and in the best interests of the Company Stockholders; (ii) approved and declared advisable this Agreement, the Ancillary Documents and the Transactions; (iii) directed that this Agreement be submitted to the Company Stockholders for adoption; and (iv) resolved to recommend to the Company Stockholders adoption of this Agreement and the Ancillary Documents and approval of the Transactions, in each case, in accordance with the DGCL. The resolutions adopted by the Company Board have not been subsequently rescinded, modified or withdrawn in any way.

(c) The Company Stockholder Approval is the only vote of the holders of any class or series of Company Capital Stock or other securities of any Company Group Member necessary to approve this Agreement, the Ancillary Documents to which the Company is or will be a party and the consummation of the Merger. No other vote or consent of the holders of any class or series of Company Capital Stock or other securities of any Company Group Member is required in connection with the consummation of the Merger. The execution and delivery of the Company Stockholder Written Consent will constitute the Company Stockholder Approval, and the Company Stockholder Written Consent will be irrevocable. In connection with the execution and delivery of the Company Stockholder Written Consent, the Company will take all actions necessary to comply with the DGCL and its Governing Documents.

Section 4.4 Financial Statements; Undisclosed Liabilities.

(a) Section 4.4(a) of the Company Disclosure Schedules sets forth a true and complete copy of (i) the audited consolidated balance sheets of the Company Group as of December 31, 2020 and December 31, 2021 and the related consolidated statements of operations, and stockholders' equity (deficit) and cash flows of the Company Group for (A) the period beginning on October 22, 2020 (the inception date of the Company) through December 21, 2020, and (B) the year ended December 31, 2021 (the "Annual Company Financial Statements") and (ii) the unaudited consolidated balance sheet of the Company as of September 30, 2022, and the related statement of operations, and stockholders' equity (deficit) and cash flows of the Company for the nine-month period then ended (the "Interim Company Financial Statements" and, collectively with the Annual Company Financial Statements, the "Company Financial Statements"). The Company Financial Statements (including the notes thereto) (A) were prepared in conformity with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and (B) fairly present in all material respects the financial position, results of operations and cash flows of the Company as at the dates thereof and for the periods indicated therein, except as otherwise specifically noted therein and, in the case of the Interim Company Financial Statements, subject to normal and recurring year-end adjustments as permitted by GAAP that are not material to the Company Group.

(b) No Company Group Member has any Liabilities that are not reflected or adequately reserved for on the Interim Company Financial Statements, except (i) for Liabilities incurred in the ordinary course of business since September 30, 2022 (none of which is a Liability for breach of contract, breach of warranty, tort, infringement or violation of Law), (ii) for Liabilities incurred in connection with the negotiation, preparation or execution of this Agreement or any Ancillary Documents or the consummation of the Transactions, (iii) as set forth on Section 4.4(b) of the Company Disclosure Schedules, or (iv) for Liabilities that are not, and would not reasonably be expected to be, individually or in the aggregate, material to the Company Group Members, taken as a whole.

(c) The Company has established and maintains a system of internal accounting controls that is designed to provide, in all material respects, reasonable assurance that (i) all transactions are executed in accordance with management's authorization, (ii) all transactions are recorded as necessary to permit preparation of proper and accurate financial statements in conformity with GAAP and to maintain accountability for the Company's assets, and (iii) material information is communicated to management as appropriate.

(d) Except as set forth on Section 4.4(d) of the Company Disclosure Schedules, no Company Group Member has received any written complaint, allegation, assertion or claim that there is (i) "significant deficiency" in the internal controls over financial reporting of such Company Group Member, (ii) a "material weakness" in the internal controls over financial reporting of such Company Member or (iii) fraud, whether or not material, that involves management or other employees of any Company Group Member who have a significant role in the internal controls over financial reporting of any Company Group Member.

(e) No Company Group Member is a party to, or is subject to any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among any Company Group Member, on the one hand, and any unconsolidated Affiliate, on the other hand), including any structured finance, special purpose or limited purpose entity or Person, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Securities Act), in each case, where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material Liabilities of, any Company Group Member in the Company Financial Statements.

(f) As of the date hereof, the Company Group Members only have Indebtedness as set forth on Section 4.4(f) of the Company Disclosure Schedules.

Section 4.5 Consents and Requisite Governmental Approvals; No Violations.

(a) No Consent of or with any Governmental Entity is required on the part of any Company Group Member with respect to the Company's execution, delivery or performance of its obligations under this Agreement or the Ancillary Documents to which the Company is or will be party or the consummation of the Transactions, except for (i) the filing of the Certificate of Merger in accordance with the DGCL; (ii) the Nasdaq Listing Application and Nasdaq Approval; or (iii) any other Consents the absence of which would not, individually or in the aggregate, be material to the Company Group, taken as a whole, or would not have a Company Impairment Effect.

(b) None of the execution, delivery or performance by the Company of this Agreement or the Ancillary Documents to which the Company is or will be a party or the consummation of the Transactions will (i) contravene or conflict with any provision of the Company's Governing Documents, (ii) except as set forth on Section 4.5(b) of the Company Disclosure Schedules, violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the termination or acceleration of, or a right of termination, Consent, cancellation, amendment, modification, suspension, revocation, acceleration or amendment under, accelerate the performance required by, or result in the acceleration or trigger of any payment, posting of collateral (or right to require the posting of collateral), time of payment, vesting or increase in the amount of any compensation or benefit payable pursuant to, any of the terms, conditions or provisions of any Company Material Contract or any Permit held by any Company Group Member, (iii) violate, or constitute a breach under, any Order or applicable Law to which any Company Group Member or any of its or their respective properties or assets are bound or (iv) result in the creation of any Lien upon any of the assets or properties (other than any Permitted Liens) or Equity Securities of any Company Group Member, except, in the case of any of clauses (ii) through (iv) above, as would not, individually or in the aggregate, be material to the Company Group, taken as a whole, or would not have a Company Impairment Effect.

Section 4.6 Permits.

The Company Group Members hold, and have held, all Permits that are required to own, lease or operate their properties and assets and to conduct their respective businesses, except where the failure to hold or obtain the same would not, individually or in the aggregate, be material to the Company Group, taken as a whole (the "Company Material Permits"). Each Company Material Permit is in full force and effect in accordance with its terms, no written notice of revocation, cancellation or termination of any Company Material Permit has been received by any Company Group Member that has not been withdrawn and no Proceeding in respect of any violation of any Company Material Permit by any Company Group Member is pending or, to the Company's knowledge, threatened against any Company Group Member.

Section 4.7 Material Contracts.

(a) Section 4.7(a) of the Company Disclosure Schedules sets forth, as of the date of this Agreement, a true and complete list of the following Contracts (other than any Company Employee Benefit Plan) to which any Company Group Member is a party (together with all material amendments, waivers or other changes thereto) (each Contract required to be set forth on Section 4.7(a) of the Company Disclosure Schedules, each Contract required to be set forth onSection 4.12(c)(i) and (ii) of the Acquiror Disclosure Schedules, each Contract required to be set forth on Section 4.20 of the Company Disclosure Schedules and each Contract required to be set forth onSection 4.21, collectively, the "Company Material Contracts"):

(i) any Contract relating to Indebtedness or any Contract requiring any Company Group Member to guarantee the Liabilities of any Person (other than a Company Group Member) or pursuant to which any Person (other than a Company Group Member) has guaranteed the Liabilities of a Company Group Member;

(ii) any Contract for the disposition of any portion of the assets or business of any Company Group Member or for the acquisition by a Company Group Member of the assets or business of any other Person, or under which a Company Group Member has any continuing obligation with respect to an "earn-out", contingent purchase price or other contingent or deferred payment obligation;

(iii) any Contract with any Company Material Customer or Company Material Supplier;

(iv) any lease, rental or occupancy agreement, license, installment and conditional sale agreement and any other Contract with outstanding obligations that (A) provides for the ownership of, leasing of, occupancy of, title to, use of, or any leasehold or other interest in any real or personal property and (B) involves aggregate payments in excess of $200,000 in any calendar year;

(v) any Contract for any joint venture, partnership, strategic alliance or similar relationship;

(vi) any Contract that (A) limits or purports to limit, in any material respect, the freedom of any Company Group Member to engage or compete in any line of business or with any Person or in any area or that would so limit or purport to limit the operations of Acquiror or any of its Affiliates after the Closing, (B) contains any exclusivity, "most favored nation" or similar provisions, obligations or restrictions or (C) contains any other provisions restricting or purporting to restrict the ability of any Company Group Member, directly or indirectly through third parties, in any material respect or that would so limit or purports to limit, in any material respect, Acquiror or any of its Affiliates after the Closing;

(vii) any Contract requiring any future capital commitment or capital expenditure (or series of capital expenditures) by any Company Group Member in an amount in excess of (A) $200,000 annually or (B) $1,000,000 over the life of the agreement;

(viii) any Contract under which a Company Group Member has, directly or indirectly, made or agreed to make any loan, advance, or assignment of payment to any Person or made any capital contribution to, or other investment in, any Person (other than any Company Group Member);

(ix) any settlement, conciliation or similar Contract (A) the performance of which would be reasonably likely to involve any payments after the date of this Agreement, (B) with a Governmental Entity or (C) that imposes, at any time in the future, any material, non-monetary obligations on a Company Group Member (or Acquiror or any of its Affiliates after the Closing);

(x) any Contract that is a currency or interest hedging arrangement;

(xi) any other Contract the performance of which requires either (A) annual payments by a Company Group Member in excess of $200,000 or (B) aggregate payments by a Company Group Member in excess of $1,000,000 over the life of the Contract and, in each case, that is not terminable by such Company Group Member without penalty upon less than thirty (30) days' prior written notice; and

(xii) any commitment to enter into agreement of the type described in clauses (i) through (xi) of this Section 4.7(a).

(b) (i) Each Company Material Contract is valid and binding on, and enforceable against, the Company Group Member party thereto and, to the Company's knowledge, the counterparty thereto, and is in full force and effect, in each case subject to the Enforceability Exceptions, (ii) the Company Group Member party thereto and, to the Company's knowledge, the counterparties thereto, are not in, or alleged to be in, material breach of, or material default under, any Company Material Contract, (iii) as of the date of this Agreement, no Company Group Member has received or given any written claim or notice of breach of or default or notice of termination under any Company Material Contract, and (iv) to the Company's knowledge, no event has occurred which individually or together with other events, would reasonably be expected to result in a material breach of or a material default under any Company Material Contract (in each case, with or without notice or lapse of time or both). True and complete copies of the Company Material Contracts have been delivered to or made available to Acquiror or its Representatives.

Section 4.8 Absence of Changes. During the period beginning on October 1, 2022 and ending on the date of this Agreement, (a) no Company Material Adverse Effect or Company Impairment Effect has occurred and (b) except for any Pandemic Measures, (i) the Company Group Members have conducted their respective businesses in the ordinary course and (ii) except as set forth on Section 4.8(b)(ii) of the Company Disclosure Schedules, no Company Group Member has taken any action that would require the consent of Acquiror if taken during the period from the date of this Agreement until the Closing pursuant to clauses (i), (iii), (xiv), (xvi), (xviii), or (xxiii) of Section 6.1(b).

Section 4.9 Litigation. Except as set forth in Section 4.9 of the Company Disclosure Schedules, there is and there has been no Proceeding pending or, to the Company's knowledge, threatened against any Company Group Member or any of their properties, rights or assets, or to the Company's knowledge, any of their respective directors, managers or employees in their capacities as such, that, if adversely decided or resolved, has been or would reasonably be expected to be, individually or in the aggregate, material to any Company Group Member or would have a Company Impairment Effect. No Company Group Member or any of their respective material properties or assets is subject to any Order that would reasonably be expected to be materially adverse to any Company Group Member or would have a Company Impairment Effect. No Company Group Member is party to a settlement or similar agreement regarding any of the matters set forth in the two preceding sentences that contains any ongoing obligations, restrictions or Liabilities (of any nature) that would reasonably be expected to be, individually or in the aggregate, material to such Company Group Member or would have a Company Impairment Effect.

Section 4.10 Compliance with Applicable Law. The Company Group Members (a) conduct and have conducted their respective businesses in accordance with all applicable Laws, Orders and Permits and are not and during such period have not been in violation of any such Law or Order or the terms of any Permit and (b) have not received any written communications from a Governmental Entity or other Person and, to the Company's knowledge, there is no such pending communication, that alleges that any Company Group Member is not in compliance with any such Law, Order, or Permit, except in each case of clauses (a) and (b), as would not, individually or in the aggregate, be material to the Company Group, taken as a whole, or would not have a Company Impairment Effect. This Section 4.10 shall not apply to Company Employee Benefit Plans.

Section 4.11 Environmental Matters.

(a) Except as would not, individually or in the aggregate, be material to the Company Group, taken as a whole, or have a Company Impairment Effect:

(i) each Company Group Member is, and has been, in compliance with all applicable Environmental Laws;

(ii) no Company Group Member has received any written notice or communication from any Governmental Entity or any other Person asserting any actual, alleged, or potential violation in any respect of, or a failure to comply in any respect with, any Environmental Laws by a Company Group Member;

(iii) no Company Group Member has generated, treated, stored, disposed of, arranged for, transported, released, or otherwise handled any Hazardous Substances in a manner that would reasonably be expected to give rise to any Liability under any Environmental Laws;

(iv) there has been no release by any Company Group Member or for which a Company Group Member would reasonably be expected to be liable by Contract or by operation of Law, of any Hazardous Substance at, under, from or to any facility or real property currently or formerly owned, leased or operated by a Company Group Member; and

(v) no Company Group Member has assumed, whether by contract or operation of law, or provided an indemnity regarding, the liability of any other Person under any Environmental Laws.

(b) The Company has made available to Acquiror copies of all material environmental, health and safety reports and similar documents that were prepared by

or for any Company Group Member, including by third parties relating to the operations, properties or facilities of any Company Group Member, as well as material correspondence with any Person regarding any actual or alleged compliance with or Liability under any Environmental Law or regarding the release or management of any Hazardous Substance, in either case concerning the businesses or the properties or operations of any Company Group Member.

Section 4.12 Intellectual Property.

(a) Section 4.12(a) of the Company Disclosure Schedules sets forth a true and complete list of all (i) Company Registered Intellectual Property and (ii) material Company Software. Section 4.12(a) of the Company Disclosure Schedules lists, for each item of Company Registered Intellectual Property (A) the record owner of such item, (B) the jurisdictions in which such item has been issued or registered or filed, (C) the issuance, registration or application date, as applicable, for such item and (D) the issuance, registration or application number, as applicable, for such item.

(b) Each item of Company Owned Intellectual Property is subsisting, valid, and to the Company's knowledge, enforceable. The Company Group has used reasonable efforts to maintain and protect all Company Owned Intellectual Property. No item of the Company Registered Intellectual Property has been forfeited, cancelled or abandoned, or has expired or lapsed. None of the Company Owned Intellectual Property is the subject of any pending Proceedings and, to the Company's knowledge, no such Proceedings are threatened by any Governmental Entity or any other Person.

(c) A Company Group Member solely and exclusively owns all right, title and interest in and to all Company Owned Intellectual Property, free and clear of all Liens (other than Permitted Liens). Section 4.12(c)(i) of the Company Disclosure Schedules sets forth a list of all currently-effective Contracts pursuant to which a Company Group Member has been granted a right or license to any Intellectual Property Rights other than Contracts for commercially available off-the shelf Software or Software subject to shrink wrap licenses entered into in the ordinary course of business (the Contracts required to be listed on Section 4.12(c)(i) of the Company Disclosure Schedules, collectively, "Company Inbound Licenses"). Section 4.12(c)(ii) of the Company Disclosure Schedules sets forth a list of all currently-effective Contracts pursuant to which a Company Group Member (i) has granted another Person a right or license to Company Owned Intellectual Property; and (ii) to the extent not scheduled pursuant to the foregoing clause (i), has granted another Person a covenant not to sue with respect to any Company Owned Intellectual Property. The applicable Company Group Member has, and will continue to have immediately after the Closing, valid rights under all Company Inbound Licenses to use, sell and license, as the case may be, all Company Licensed Intellectual Property as the same is currently used, sold or licensed by the applicable Company Group Member as of the date of this Agreement. The Company Intellectual Property comprises all Intellectual Property Rights material to the businesses of the Company Group Members and constitutes all of the Intellectual Property Rights necessary and sufficient for the Company Group's conduct of their respective businesses as currently conducted, free and clear of all Liens (other than Permitted Liens).

(d) The Company has taken steps consistent with standard industry practices, and has taken no less than reasonable care, to safeguard and maintain the secrecy of any trade secrets and other material confidential information owned, possessed or stored by or otherwise under the control of, the Company Group. To the Company's knowledge, no director, manager or employee of or contractor to any Company Group Member has disclosed any trade secrets or material confidential information of the Company Group to any other Person unless such disclosure was under an appropriate, valid and binding written non-disclosure agreement containing appropriate limitations and protections on use and disclosure. All present and former Company Group employees and independent contractors who independently or jointly contributed to or otherwise participated in the authorship, invention, creation, improvement, modification or development of any Company Owned Intellectual Property have agreed to maintain and protect the trade secrets and confidential information of the applicable Company Group Member.

(e) The conduct and operation of the businesses of the Company Group, as currently conducted, does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any Person, and has not infringed upon, misappropriated or otherwise violated any Intellectual Property Rights of any Person. To the Company's knowledge, no Person is infringing, misappropriating or otherwise violating any Company Owned Intellectual Property. No Company Group Member has made any written claim against any Person alleging any infringement, misappropriation or other violation of any Company Owned Intellectual Property.

Section 4.13 Data Privacy and Security.

(a) There is not currently pending or, to the Company's knowledge, threatened, and there has not been any, Proceeding against any Company Group Member initiated by (i) the United States Federal Trade Commission, any state attorney general or similar state official; (ii) any other Governmental Entity, foreign or domestic; (iii) any regulatory entity, privacy regulator or otherwise, or (iv) any other Person, in each case, with respect to privacy, cybersecurity, and, to the Company's knowledge, there are no facts upon which such a Proceeding could be based.

(b) There have not been any actual, suspected, or alleged material Security Incidents or actual or alleged claims related to material Security Incidents, and, to the Company's knowledge, there are no facts or circumstances which could reasonably serve as the basis for any such allegations or claims. There are no data security, information security, or other technological vulnerabilities with respect to the Company Group's services or with respect to the Company IT Systems that would have a materially adverse impact on their operations or cause a material Security Incident.

(c) The Company Group Members own or have license to use pursuant to a Company Material Contract the Company IT Systems as necessary to operate their respective businesses as currently conducted and such Company IT Systems are sufficient for the operation of their respective businesses as currently conducted. The Company Group Members have back-up and disaster recovery arrangements, procedures and facilities for the continued operation of its businesses in the event of a failure of the Company IT Systems that are, in the reasonable determination of the Company, commercially reasonable and in accordance in all material respects with standard industry practice. There has not been any material disruption, failure or, to the Company's knowledge, unauthorized access with respect to any of the Company IT Systems that has not been remedied, replaced or mitigated in all material respects. To the Company's knowledge, none of the Company IT Systems contain any worm, bomb, backdoor, trap doors, Trojan horse, spyware, keylogger software, clock, timer or other damaging devices, malicious codes, designs, hardware component, or software routines that causes the Company Software or any portion thereof to be erased, inoperable or otherwise incapable of being used, either automatically, with the passage of time or upon command by any unauthorized person.

(d) The Company Group Members have, and have had, in place reasonable and appropriate administrative, technical, physical and organizational measures and safeguards to (i) ensure the integrity, security, and the continued, uninterrupted, and error-free operation of the Company IT Systems, and the confidentiality of the source code of any Company Software, and (ii) to protect Business Data against loss, damage, and unauthorized access, use, modification, or other misuse.

Section 4.14 Compliance with International Trade & Anti-Corruption Laws

(a) No Company Group Member or any of their respective officers, directors, or employees, and to the Company's knowledge, none of the Company Group's Representatives acting for or on behalf of any Company Group Member, is or has been: (i) a Person named on any Sanctions Laws-related list of designated or restricted Persons maintained by a Governmental Entity; (ii) located, organized or resident in, or a blocked national of, a country or territory which is itself the subject of or target of any Sanctions Laws or part of or acting for or on behalf of a Governmental Entity that is a target of any Sanctions Laws; (iii) an entity owned, directly or indirectly, by one or more Persons described in clause (i) or (ii); (iv) otherwise engaging in dealings with or for the benefit of any Person described inclauses (i) through (iii) or any country or territory which is or has been, the subject of or target of any Sanctions Laws; or (v) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or U.S. anti-boycott Laws.

(b) No Company Group Member or any of their respective officers, directors, or employees, and to the Company's knowledge, none of the Company Group's Representatives acting for or on behalf of the Company Group, has (i) violated any Anti-Corruption Laws; (ii) offered, paid, authorized or promised to pay anything of value, regardless of form, to any Person for the purpose of influencing any act or decision of such Person or securing an improper advantage to assist any Company Group Member in obtaining or retaining business; or (iii) established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties, or used or are using any corporate funds for any illegal contributions, gifts, entertainment, travel or other unlawful expenses, in breach of any Anti-Corruption Law.

Section 4.15 Employee Benefit Plans. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect or a Company Impairment Effect:

(a) Section 4.15(a) of the Company Disclosure Schedules sets forth a true and complete list of all material Company Employee Benefit Plans.

(b) With respect to each material Company Employee Benefit Plan, true and correct copies of the current plan and trust document(s) (or for each unwritten material Company Employee Benefit Plan, a written description of the material terms thereof), where applicable, have previously been made available to Acquiror.

(c) Each Company Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or approval letter from the Internal Revenue Service with respect to such qualification (or is the subject of a favorable opinion letter from the Internal Revenue Service on the form of such Company Employee Benefit Plan) to the effect that such Company Employee Benefit Plan satisfies the requirements of Section 401(a) of the Code and that its related trust is exempt from taxation under Section 501(a) of the Code; and, to the Company's knowledge, there are no facts or circumstances that could reasonably be expected to cause the loss of such qualification or the imposition of any Liability, penalty or tax under ERISA, the Code or other applicable Laws.

(d) Each Company Employee Benefit Plan is and has been established, operated and administered in accordance with applicable Laws, including ERISA and the Code, and its terms. No Proceeding (other than those relating to routine claims for benefits) is pending or, to the Company's knowledge, threatened with respect to any Employee Benefit Plan, and, to the Company's knowledge, there are no facts that reasonably would be expected to give rise to any such Proceedings. There has been no "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to any Company Employee Benefit Plan. All payments or contributions required to have been made by the applicable due date with respect to all Company Employee Benefit Plans either have been made or have been accrued, in either event, in accordance with the terms of the applicable Company Employee Benefit Plan and applicable Law.

(e) The Company does not have any Liability under or with respect to title IV of ERISA. Except as set forth in Section 4.15(e) of the Company Disclosure Schedules, each Company Employee Benefit Plan that provides health or life benefits is fully insured by a third party insurance company.

(f) Except as set forth in Section 4.15(f) of the Company Disclosure Schedules, no Company Employee Benefit Plan provides postretirement health or life insurance benefits to any Company Group current or former employee, officer, or director, or any dependent or beneficiary thereof, except as otherwise required under state or federal benefits continuation laws (e.g., COBRA) for which the covered individual pays the full cost of coverage.

(g) Except as set forth in Section 4.15(g) of the Company Disclosure Schedules, neither the execution and delivery of this Agreement, nor the consummation of the Transactions (either alone or in combination with another event) would reasonably be expected to result in the payment of any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment," as defined in 280G(b)(1) of the Code.

(h) Each Company Employee Benefit Plan that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) and is not exempt from Section 409A of the Code has a plan document that satisfies the requirements of Section 409A of the Code and has been operated in compliance with Section 409A of the Code and the terms of such plan document. The Company does not have any "gross-up" or indemnity obligation for Taxes imposed under Section 4999 or 409A of the Code.

(i) Neither the Company, nor, to the Company's knowledge, any ERISA Affiliate of the Company, has incurred or, to the Company's knowledge, could reasonably be expected to have any Liability for Taxes under Sections 4975 through 4980 or Sections 4980A through 4980I of the Code. The Company maintains a health plan that satisfies the requirements for "minimum essential coverage" under Section 4980H(a) of the Code, as applicable.

(j) No Company Employee Benefit Plan is subject to the laws of any jurisdiction outside the United States.

Section 4.16 Labor Matters.

(a) Section 4.16(a) of the Company Disclosure Schedules separately sets forth all of the Company Group employees as of the date of this Agreement, including for each such employee: (i) name; (ii) employer; (iii) job title; (iv) Fair Labor Standards Act classification; (v) work location (city and state); (vi) compensation (including annual base salary (if paid on a salary basis), hourly rate (if paid on an hourly basis), or commission rate (if paid on a purely commission basis), as applicable); (vii) 2021 incentive compensation; (viii) date of hire; (ix) fringe benefits (other than employee benefits applicable to all employees, which material benefits are set forth on a separate list on Section 4.15(a) of the Company Disclosure Schedules); and (x) status (i.e., active or inactive and if inactive, the type of leave and estimated duration). To the Company's knowledge, no employee is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality or non-competition agreement, that in any way adversely affects or restricts the performance of such employee's duties. To the Company's knowledge, no employee, manager, director or officer of any Company Group Member intends to terminate his or her employment with such Company Group Member.

(b) The Company Group is, and has been, in compliance in all material respects with all applicable Laws respecting labor and employment matters, withholding and remitting of taxes, and information reporting, including all contractual commitments and all such Laws relating to fair employment practices, pay equity, the classification of independent contractors, workplace safety and health, work authorization and immigration, unemployment compensation, workers' compensation, affirmative action, terms and conditions of employment, employee leave, collective bargaining, discrimination, civil rights, collection and payment of social security Taxes and similar

Taxes, and wages and hours, including payment of minimum wages and overtime. The Company Group has, or will have no later than the Closing Date, paid all accrued salaries and wages of the Company Group employees due to be paid through the Closing Date. No Company Group Member is delinquent in any payments to any employee for any wages, salaries, commissions, bonuses, severance, fees or other direct compensation due to be paid with respect to any services performed for it. No Company Group Member is or has been a government contractor.

(c) No Company Group Member has been party to or, to the Company's knowledge, the subject of any Proceeding relating to employment or labor matters concerning the employees or other service providers of any Company Group Member, and no such matters are pending or, to the Company's knowledge, have been threatened against any Company Group Member.

(d) The Company Group has not experienced a "plant closing," "business closing," or "mass layoff" or similar group employment loss as defined in the federal WARN Act or any similar state, local or foreign Law affecting any site of employment of the Company Group or one or more facilities or operating units within any site of employment or facility of the Company Group.

(e) No Company Group Member is a party to or bound by any collective bargaining agreements or other agreements with any labor organization, labor union, works council or other employee representative or any other Contract with a labor union, labor organization, works council, employee delegate, representative or other employee collective group, nor to the Company's knowledge is there any duty on the part of any Company Group Member to bargain with any labor union, labor organization, works council, employee delegate, representative or other employee collective group. There has been no actual or, to the Company's knowledge, threatened unfair labor practice charges, material grievances, arbitrations, strikes, lockouts, work stoppages, slowdowns, picketing, hand billing or other material labor disputes against any Company Group Member. To the Company's knowledge, there have been no labor organizing activities with respect to any employees of the Company Group.

(f) No employee layoff, facility closure or shutdown (whether voluntary or by Order), reduction-in-force, furlough, temporary layoff, material work schedule change, reduction in hours, or reduction in salary or wages by any Company Group Member has occurred within the twenty-four (24) months prior to the date of this Agreement or has been announced as of the date of this Agreement as a result of COVID-19 or any Law, Order, directive, guidelines or recommendations by any Governmental Entity in connection with or in response to COVID-19.

(g) No allegations of sexual harassment or sexual misconduct have been made to any Company Group Member against any director, manager, officer or executive employee of any Company Group Member and, to the Company's knowledge, there have not been any such allegations.

(h) Section 4.16(h) of the Company Disclosure Schedules contains a complete and accurate listing of the name and contact information of each Contractor who is expected to be or was paid more than $200,000 in any year by the Company Group Members in the aggregate (a "Company Material Contractor"). A copy of each Contract relating to the services a Company Material Contractor provides to such Company Group Member has been provided to Acquiror. To the Company's knowledge, no Contractor used by any Company Group Member is a party to, or is otherwise bound by, any agreement or arrangement with any third party, including any confidentiality or non-competition agreement, that in any way adversely affects or restricts the performance of such Contractor's duties for the Company. To the Company's knowledge, no current Company Material Contractor used by the Company Group intends to terminate his or her or its relationship with such Company Group Member. No Company Group Member has any obligation or Liability with respect to any Taxes (or the withholding thereof) in connection with any Contractor.

Section 4.17 Insurance. Section 4.17 of the Company Disclosure Schedules sets forth a true and complete list of all policies or programs of insurance owned or held by, or for the benefit of, any Company Group Member as of the date of this Agreement. All such policies are in full force and effect, all premiums due and payable thereon as of the date of this Agreement have been paid in full or accrued as of the date of this Agreement, and true and complete copies of all such policies have been made available to Acquiror. No Company Group Member is in breach or default (including any such breach or default with respect to the payment of premiums or the giving of notice), and, to the Company's knowledge, no event has occurred which, with notice or the lapse of time or both, would constitute such a breach or default under, or permit termination, rescission or avoidance of, the policy, and to the Company's knowledge, no such action has been threatened. As of the date of this Agreement, no claim for coverage by any Company Group Member is pending under any such policies as to which the relevant insurers have denied, disputed, or reserved the right to deny or dispute coverage.

Section 4.18 Tax Matters.

(a) The Company Group has prepared and filed, or will prepare and file, all Tax Returns required to be filed by it on or before the Closing Date, all such Tax Returns are, or will be, true, complete and correct in all material respects and prepared in compliance with all applicable Laws and Orders. The Company Group has paid, or will pay, all Taxes required to have been paid by it on or before the Closing Date regardless of whether shown on a Tax Return.

(b) The Company Group has timely withheld and paid to the appropriate Tax Authority all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Person.

(c) No Company Group Member is currently the subject of a Tax audit or examination, and has not been notified of the commencement or anticipated commencement of any Tax audit or examination. All deficiencies asserted, or assessments made, against the Company Group as a result of any examinations by any Tax Authority have been fully paid.

(d) No Company Group Member has consented to extend or waive the time in which any Tax may be assessed or collected by any Tax Authority.

(e) The Liability for unpaid Taxes for each Company Group Member for all periods ending on or before September 30, 2022 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Company Financial Statements. The Liability for unpaid Taxes for each Company Group Member for all periods following the end of the most recent period covered by the Company Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company Group (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) Section 4.18(f) of the Company Disclosure Schedules sets forth (i) the Tax Returns of each Company Group Member for which examinations by Tax Authorities have been completed; and (ii) the Tax Returns of each Company Group Member for which examinations by Tax Authorities are presently being conducted. The Company has delivered or made available to Acquiror copies of all federal, state, local, and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, each Company Group Member for all Tax periods ending after January 1, 2019.

(g) No "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been requested, entered into or issued by any Tax Authority with respect to the Company Group.

(h) No Company Group Member is nor has been a party to, or a promoter of, any "listed transaction" as defined in Section 6707A of the Code and Treasury Regulations Section 1.6011-4 (or any corresponding or similar provision of state, local or non-U.S. income Tax Law).

(i) There are no Liens for Taxes on any assets of the Company Group other than Permitted Liens.

(j) No Company Group Member (i) has been a member of an affiliated, combined, consolidated or unitary group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company and which includes only Company Group Members) or (ii) has any Liability for the Taxes of any Person (other than other Company Group Members) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract or otherwise.

(k) No claims have ever been made by any Tax Authority in a jurisdiction where a Company Group Member does not file Tax Returns that the Company Group Member is or may be subject to taxation by that jurisdiction.

(l) No Company Group Member is a party to, or bound by, any Tax allocation, Tax sharing or Tax indemnity or similar agreements (other than agreements entered into in the ordinary course of business the primary purpose of which does not related to Taxes).

(m) No Company Group Member has a branch, permanent establishment (within the meaning of an applicable Tax treaty), or an office or fixed place of business in a country other than the country in which it is organized.

(n) Each Company Group Member is treated either as a corporation or a disregarded entity for U.S. federal income tax purposes and applicable state Tax purposes.

(o) No Company Group Member will be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of: (i) any change in a method of accounting under Section 481 of the Code (or any similar provision of state, local or non-U.S. Law), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date; (ii) an installment sale or open transaction occurring on or prior to the Closing Date; (iii) a prepaid amount received on or before the Closing Date; (iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or non-U.S. Law; or (v) any election under Section 108(i) of the Code.

(p) No Company Group Member has deferred any Taxes under Section 2302 of the Coronavirus Aid, Relief and Economic Security Act of 2020.

Section 4.19 Brokers. Other than as set forth on Section 4.19 of the Company Disclosure Schedules, no broker, finder, investment bank or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions based upon arrangements made by or on behalf of the Company or any of its Affiliates for which any Company Group Member has any obligation.

Section 4.20 Real and Personal Property.

(a) Owned Real Property. No Company Group Member owns any interest in any real property.

(b) Leased Real Property. Section 4.20(b) of the Company Disclosure Schedules sets forth a true and complete list of all Company Leased Real Property and all Company Real Property Leases (including street addresses, the date thereof and legal names of the parties thereto, to the extent such information exists for such Company Leased Real Property) pursuant to which any Company Group Member is a tenant or landlord as of the date of this Agreement. True and complete copies of all such Company Real Property Leases have been made available to Acquiror. The Company or the applicable Subsidiary has a good, valid and enforceable leasehold interest in each Company Leased Real Property free and clear of all Liens, except for Permitted Liens. The relevant Company Group Member's possession and quiet enjoyment of the Company Leased Real Property under each Company Real Property Lease has not been disturbed and there are no material disputes with respect to such Company Leased Real Property. To the Company's knowledge, no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute a breach or default under or permit the termination or modification of, or acceleration of rent under, such Company Real Property Lease. Each Company Group Member has performed all material obligations required to be performed by it under any Company Real Property Lease, and no Company Group Member has the present expectation or intention of not fully performing on a timely basis all material obligations required to be performed by such Company Group Member under any Company Real Property Lease. The Transactions, this Agreement and any Ancillary Document to be delivered at or before Closing do not require the consent of any other party relating to the Company Leased Real Property, including from landlords under a Real Property Lease, whether as a deemed "assignment" or otherwise, will not result in a breach of or default under any Company Real Property Lease, will not give rise to any termination or recapture rights, and will not otherwise cause any such Company Real Property Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing. No Company Group Member has subleased, licensed or otherwise granted any Person the right to use or occupy such Company Leased Real Property or any portion thereof and no Company Group Member has collaterally assigned or granted any other security interest in such Company Real Property Lease or any interest therein.

(c) Real Property Condition. The relevant Company Group Member has in each Company Leased Real Property, in each case to the extent necessary to conduct their respective businesses, (i) direct or indirect legal access to public roads or valid irrevocable easements over private streets or private property for such ingress to and egress from all such buildings and structures and (ii) reasonable access to water supply, electrical connections, fire protection and other utilities necessary for the conduct of their respective businesses, all of which utilities are provided via public roads or via irrevocable appurtenant easements benefitting the Company Leased Real Property. To the Company's knowledge, none of the structures on any Company Leased Real Property materially encroaches upon real property of another Person, and no structure of any other Person materially encroaches upon any Company Leased Real Property. No Company Group Member has received any written notice from any Governmental Entity alleging of a violation of any Laws with respect to any of the Company Leased Real Property and, to the Company's knowledge, the Company Leased Real Property is not in violation of any Law, covenant, condition, restriction, easement, license, permit or agreement relating to any Company Leased Real Property. There are no Orders pending nor, to the Company's knowledge, threatened against or affecting the Company Leased Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain Proceedings or Proceeding to impose any special assessment to any Company Leased Real Property or any material portion thereof, which would reasonably be expected to curtail or interfere with the use of such Company Leased Real Property for the present conduct of the businesses of the Company Group. The buildings and other improvements constituting the Company Leased Real Property are each in good condition and repair (ordinary wear and tear excepted) in all material respects and are fit for use in the ordinary course of the businesses of the Company Group, and all such buildings and improvements have been installed and maintained in all material respects in accordance with all applicable Laws. None of the Company Leased Real Property has been damaged or destroyed by fire or other casualty that has not been restored. The Company Leased Real Property identified in Section 4.20(b) of the Company Disclosure Schedules comprises all of the real property used or intended to be used in, or otherwise related to, the businesses of the Company Group.

(d) Personal Property.

(i) The Company Group has good, valid and indefeasible title to, or a valid leasehold interest in or license or right to use, all of the material tangible assets and properties of the Company Group reflected in the Company Financial Statements or thereafter acquired by a Company Group Member prior to the date hereof, except for assets disposed of in the ordinary course of business.

(ii) The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Company Group are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

Section 4.21 Transactions with Affiliates. Section 4.21 of the Company Disclosure Schedules sets forth all Contracts between (a) any Company Group Member, on the one hand, and (b) any officer, director, manager, Affiliate or holder of Equity Securities of any Company Group Member or, to the Company's knowledge, any Affiliate or family member of any of the foregoing, on the other hand (each Person identified in this clause (b), a "Company Related Party"), other than Contracts with respect to a Company Related Party's employment with or service as a director or manager to (including benefit plans and other ordinary course compensation from) the Company entered into in the ordinary course of business. No Company Related Party (i) owns any interest in any material asset used in their respective business, (ii) possesses, directly or indirectly, any material financial interest in, or is a director or executive officer of, any Person which is a supplier, lender, partner, lessor, lessee or other material business relation of any Company Group Member or (iii) owes any material amount to, or is owed any material amount by, the Company Group (other than ordinary course accrued compensation, employee benefits, employee or director expense reimbursement). All Contracts, arrangements, understandings, interests and other matters disclosed pursuant to this Section 4.21 are referred to herein as "Company Related Party Transactions."

Section 4.22 Customers and Suppliers.

(a) Section 4.22(a) of the Company Disclosure Schedules sets forth a true and complete list of the customers of the Company for the fiscal year ended on December 31, 2021 and January 1, 2022 through the date of this Agreement to whom the Company Group made gross sales of at least $200,000 (the "Company Material Customers"). No Company Material Customer has, within the past twelve (12) months through the date of this Agreement, canceled, materially reduced, or terminated its business with, or threatened in writing to cancel, materially reduce, or terminate its business with, any Company Group Member.

(b) Section 4.22(b) of the Company Disclosure Schedules sets forth a true and complete list of the suppliers of the Company for the fiscal year ended on December 31, 2021 and January 1, 2022 through the date of this Agreement from whom the Company Group made gross purchases of at least $200,000 (the "Company Material Suppliers"). No Company Material Supplier has, within the past twelve (12) months through the date of this Agreement, canceled, materially reduced, or terminated its business with, or threatened in writing to cancel, materially reduce, or terminate its business with, any Company Group Member.

Section 4.23 Certain Information. None of the information supplied or to be supplied by or on behalf of the Company specifically for inclusion or incorporation by reference in the Proxy Statement or the Form S-4 will, at the time the Proxy Statement and the Form S-4 are filed with the SEC, at the time of any amendment or supplement thereto and at the time the Form S-4 (or any post-effective amendment or supplement) becomes effective under the Securities Act, at the time the Proxy Statement is first mailed to the Acquiror Stockholders and at the time of the Acquiror Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading.

Section 4.24 Investigation; No Other Representations.

(a) The Company, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that (i) it has conducted its own independent review and analysis of, and, based thereon, has formed an independent judgment concerning the business, assets, condition, operations and prospects of the Acquiror Parties and (ii) it has been furnished with or given access to such documents and information about the Acquiror Parties and their respective businesses and operations as it and its Representatives have deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the Transactions.

(b) In entering into this Agreement and the Ancillary Documents to which it is or will be a party, the Company has relied solely on its own investigation and analysis and the representations and warranties expressly set forth in Article 5 and in the Ancillary Documents to which it is or will be a party and no other representations or warranties of any Acquiror Party or any other Person, either express or implied, and the Company, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that, except for the representations and warranties expressly set forth in Article 5 and in the Ancillary Documents to which it is or will be a party, none of the Acquiror Parties nor any other Person makes or has made any representation or warranty, either express or implied, in connection with or related to this Agreement, the Ancillary Documents or the Transactions.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES RELATING TO THE ACQUIROR PARTIES

Subject to Section 9.8, except as set forth in the Acquiror Disclosure Schedules, each Acquiror Party hereby represents and warrants to the Company, as of the date of this Agreement and as of the Closing Date, as follows:

Section 5.1 Organization and Qualification.

(a) Each of Acquiror and Merger Sub has been duly incorporated, is validly existing as a corporation, and is in good standing under the Laws of the State of Delaware. Acquiror has the power and authority to own, operate and lease its properties, rights and assets and to carry on its business as presently conducted. True and complete copies of the Governing Documents of each Acquiror Group Member have been made available to the Company, in each case, as amended and in effect as of the date of this Agreement. The Governing Documents of each Acquiror Group Member are in full force and effect, and no Acquiror Group Member is in breach or violation of any provision set forth in its Governing Documents.

(b) Acquiror is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof, if applicable, in each case, with respect to the jurisdictions that recognize the concept of good standing or any equivalent thereof) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of its business, makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, be reasonably expected to have an Acquiror Material Adverse Effect or an Acquiror Impairment Effect.

(c) The Subsidiaries of Acquiror, together with details of their respective jurisdiction of incorporation or organization, are set forth on Section 5.1(c) of the Acquiror Disclosure Schedules (the "Acquiror Subsidiaries"). The Acquiror Subsidiaries have been duly formed or organized, are validly existing under the laws of their jurisdiction of incorporation or organization and have the requisite power and authority to own, operate and lease their properties, rights and assets and to conduct their business as it is now being conducted. Each Acquiror Subsidiary is duly qualified or licensed to transact business and is in good standing (or the equivalent thereof, if applicable, in each case, with respect to the jurisdictions that recognize the concept of good standing or any equivalent thereof) in each jurisdiction in which the property and assets owned, leased or operated by it, or the nature of the business conducted by it, makes such qualification or licensing necessary, except where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, be reasonably expect to have an Acquiror Material Adverse Effect or an Acquiror Impairment Effect. Section 5.1(c) of the Acquiror Disclosure Schedules sets forth each Acquiror Subsidiary that is a "significant subsidiary" as such term is defined under Rule 1-02(w) of Regulation S-X promulgated under the Exchange Act.

Section 5.2 Capital Stock.

(a) The authorized capital stock of Acquiror consists of (i) 150,000,000 shares of Acquiror Common Stock and (ii) 5,000,000 shares of Acquiror Preferred Stock, of which 400,000 shares are designated as Acquiror Series A Preferred Stock, 100,000 shares are designated as Acquiror Series B Preferred Stock, one (1) share is designated as the Acquiror Special Voting Share. As of the date of this Agreement, 4,602,780 shares of Acquiror Common Stock (excluding treasury shares) are issued and outstanding, 0 shares of Acquiror Series A Preferred Stock (excluding treasury shares) are issued and outstanding, 0 shares of Acquiror Series B Preferred Stock (excluding treasury shares) are issued and outstanding, and one (1) Acquiror Special Voting Share is issued and outstanding. As of the date of this Agreement, no shares of Acquiror Capital Stock are held by Acquiror in its treasury. As of the date of this Agreement, (i) 172,021 shares of Acquiror Common Stock are available for issuance pursuant to the Acquiror Stock Plan, (ii) 0 shares of Acquiror Common Stock are reserved for issuance pursuant to the exercise of outstanding Acquiror Stock Options, (iii) 334 shares of Acquiror Common Stock underlying Acquiror Restricted Stock Awards are issued and outstanding, (iv) 11,818 shares of Acquiror Common Stock are reserved for issuance upon the settlement of outstanding Acquiror Restricted Stock Units, (v) 2,573,300 shares of Acquiror Common Stock are reserved for issuance pursuant to the exercise of outstanding Acquiror Warrants, (vi) approximately 4,433,893 shares of Acquiror Common Stock are reserved for issuance pursuant to the conversion of outstanding Acquiror Convertible Notes, (vii) 0 shares of Acquiror Common Stock are reserved for issuance pursuant to the conversion of outstanding shares of Acquiror Preferred Stock, and (viii) 14,284 shares of Acquiror Common Stock are reserved for issuance pursuant to the exchange or redemption of the Acquiror Exchangeable Shares. Following the Redemptions and the cancellation of the Acquiror Special Voting Share in connection with the Exchanges, all outstanding shares of Acquiror Capital Stock will be Acquiror Common Stock or Acquiror Series C Preferred Stock, all of which is voting stock.

(b) Section 5.2(b)(i) of the Acquiror Disclosure Schedules sets forth a true and complete list of all holders, as of the date of this Agreement, of outstanding Acquiror Restricted Stock Awards, Acquiror Restricted Stock Units, and other similar rights to purchase or receive shares of Acquiror Capital Stock or similar rights granted under the Acquiror Stock Plan or otherwise (collectively, "Acquiror Stock Awards"), indicating as applicable, with respect to each Acquiror Stock Award then outstanding, (i) the type of award granted, (ii) the number of shares of Acquiror Common Stock subject to such Acquiror Stock Award, (iii) whether Acquiror Stock Award was granted under the Acquiror Stock Plan, (iv) the date of grant, per share exercise or purchase price, vesting schedule, payment schedule (if different from the vesting schedule) and expiration date thereof, (v) whether the holder has made a timely election with the Internal Revenue Service under Section 83(b) of the Code and (vi) whether (and to what extent) the vesting of such Acquiror Stock Award will be accelerated or otherwise adjusted in any way or any other terms will be triggered or otherwise adjusted in any way by the consummation of the Transactions or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the Transactions. There are no Acquiror Stock Options intended to qualify as an "incentive stock option" under Section 422 of the Code. The Acquiror Stock Plan is the only plan or program that any Acquiror Group Member maintains under which stock options, restricted stock, restricted stock units, stock appreciation rights or other compensatory equity-based awards are outstanding. Acquiror has made available to the Company a true and complete copy of the Acquiror Stock Plan and the forms of all stock option agreements, restricted stock award agreements and restricted stock unit agreements evidencing outstanding Acquiror Stock Options, Acquiror Restricted Stock Awards and Acquiror Restricted Stock Units. Section 5.2(b)(ii) of the Acquiror Disclosure Schedules sets forth a true and complete list of all outstanding Acquiror Warrants and Acquiror Convertible Notes, indicating as applicable, with respect to each such Acquiror Warrant or Acquiror Convertible Note: (i) the number of shares of Acquiror Common Stock subject to such Acquiror Warrant or Acquiror Convertible Note, (ii) the date of issuance, exercise or conversion price, interest rate (if applicable), vesting schedule (if applicable), and expiration or maturity date thereof, and (iii) whether (and to what extent) the vesting, exercise or maturity of such Acquiror Warrant or Acquiror Convertible Note will be accelerated or otherwise adjusted in any way or any other terms will be triggered or otherwise adjusted in any way by the consummation of the Transactions. Section 5.2(b)(iii) of the Acquiror Disclosure Schedules sets forth a true and complete list of all Persons holding Acquiror Exchangeable Shares and the number of Acquiror Exchangeable Shares held by each such Person. All shares of Acquiror Common Stock reserved for issuance as noted in this subsection (b) will be, when issued in accordance with the terms of such Equity Security, duly authorized, validly issued, fully paid and nonassessable and not subject to any preemptive rights.

(c) All outstanding shares of Acquiror Capital Stock are duly authorized, validly issued, fully paid and nonassessable, and are not subject to, and were not issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the DGCL, the Governing Documents of Acquiror, or any Contract to which any Acquiror Group Member is a party or is otherwise bound. No shares of Acquiror Capital Stock are owned by any Acquiror Group Member. All outstanding shares of capital stock and other Equity Securities of each Subsidiary of Acquiror have been duly authorized and validly issued, are fully paid, nonassessable, and are not subject to, and were not issued in violation of, any purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right under any provision of the Law of the jurisdiction of organization of such Subsidiary, such Subsidiary's organizational documents or any Contract to which such Subsidiary or Acquiror is a party or is otherwise bound. All outstanding shares of capital stock and other Equity Securities of each such Subsidiary are owned, directly or indirectly, by Acquiror, free and clear of all Liens, other than Permitted Liens.

(d) Except as set forth in Section 5.2(a) and (b) (including the Acquiror Disclosure Schedules thereto), and as set forth in Section 5.2(d) of the Acquiror Disclosure Schedules, there are no Equity Securities of any Acquiror Group Member authorized, reserved, issued or outstanding. The outstanding shares of Acquiror Capital Stock and all outstanding Equity Securities of the Acquiror Group Members (i) were not issued in violation of the Governing Documents of any Acquiror Group Member or any other Contract to which any Acquiror Group Member is party or bound, (ii) were not issued in violation of any preemptive rights, call option, right of first refusal or first offer, subscription rights, transfer restrictions or similar rights of any Person, (iii) have been offered, sold and issued in compliance with applicable Law, including applicable Securities Laws, and (iv) are free and clear of all Liens (other than transfer restrictions under applicable Securities Law and the applicable Acquiror Group Member's Governing Documents). Except as set forth in Section 5.2(a) and (b) (including the Acquiror Disclosure Schedules thereto), and as set forth in Section 5.2(d) of the Acquiror Disclosure Schedules, no Acquiror Group Member has any outstanding, or is a party to, any (A) equity appreciation or profit participation rights or (B) options, restricted stock, profits interests, phantom stock, warrants, bonds, notes, debentures or other instruments of Indebtedness, purchase rights, subscription rights, conversion rights, exchange rights, calls, puts, rights of first refusal or first offer or other Contracts, in the case of each of clause (A) and (B), that would require any Acquiror Group Member to issue, sell or otherwise cause to become outstanding or to acquire, repurchase or redeem any Equity Securities or securities convertible into or exchangeable for Equity Securities of any Acquiror Group Member. There are no Equity Securities, instruments of Indebtedness or other rights or Contracts that entitle the holder thereof to vote on any matter submitted to the equity holders of any Acquiror Group Member except as set forth in Sections 5.2(a) and (b) (including the Acquiror Disclosure Schedules thereto) and on Section 5.2(a) of the Acquiror Disclosure Schedules. No Person is entitled to any preemptive or similar rights to subscribe for Equity Securities of any Acquiror Group Member. No Acquiror Group Member is a party to any voting trusts, proxies or other Contracts with respect to the voting or transfer of the Acquiror Capital Stock or any Equity Securities of any Company Subsidiary.

(e) Except as set forth on Section 5.2(e) of the Acquiror Disclosure Schedules, no Acquiror Group Member owns or holds (of record, beneficially, legally or otherwise), directly or indirectly, any Equity Securities in any Person or the right to acquire any such Equity Securities, and no Acquiror Group Member is a partner or member of any partnership, limited liability company or joint venture (other than any other Acquiror Group Member).

(f) The Merger Consideration Statement to be delivered by Acquiror to the Company pursuant to Section 3.3(a) will be true, correct and complete when so delivered.

Section 5.3 Authority.

(a) Each Acquiror Party has the requisite corporate power and authority to execute and deliver this Agreement and each Ancillary Document to which it is or will be a party, and, subject to receipt of the Acquiror Stockholder Approval, to perform its obligations hereunder and thereunder, and consummate the Transactions. The execution and delivery of this Agreement, the Ancillary Documents to which Acquiror or Merger Sub is or will be a party and the consummation of the Transactions have been duly authorized by the Acquiror Board or the board of directors of Merger Sub, as applicable, and no other corporate or limited liability company action, as applicable on the part of any Acquiror Party is necessary to authorize the execution and delivery by Acquiror or Merger Sub of this Agreement or the Ancillary Documents to which Acquiror or Merger Sub is (or will be) a party, the performance by Acquiror and Merger Sub of their respective obligations hereunder and thereunder and the consummation of the Transactions (other than the Acquiror Stockholder Approval).

(b) This Agreement and each Ancillary Document to which an Acquiror Party is or will be a party has been or will be, upon execution thereof, duly and validly executed and delivered by such Acquiror Party and constitutes or will constitute, upon execution and delivery thereof, a valid, legal and binding agreement of such Acquiror Party (assuming that this Agreement and the Ancillary Documents to which such Acquiror Party is or will be a party are or will be upon execution thereof, as applicable, duly authorized, executed and delivered by the other Persons party hereto or thereto, as applicable), enforceable against such Acquiror Party in accordance with their terms, subject to Enforceability Exceptions.

(c) At a meeting duly called and held, the Acquiror Board unanimously (i) determined that this Agreement, the Ancillary Documents and the Transactions are fair to and in the best interests of the Acquiror Stockholders; (ii) approved and declared advisable this Agreement, the Ancillary Documents and the Transactions; (iii) directed that this Agreement be submitted to the Acquiror Stockholders for adoption; and (iv) resolved to recommend to the Acquiror Stockholders adoption of this Agreement and the Ancillary Documents and approval of the Transactions, in each case, in accordance with the DGCL. The resolutions adopted by the Acquiror Board have not been subsequently rescinded, modified or withdrawn in any way.

(d) The Acquiror Stockholder Approval is the only vote of the holders of any class or series of Acquiror Capital Stock or other securities of any Acquiror Group Member necessary to approve this Agreement, the Ancillary Documents to which an Acquiror Party is or will be a party and the consummation of the Transactions. No other vote or consent of the holders of any class or series of Acquiror Capital Stock or other securities of any Acquiror Group Member is required in connection with the consummation of any of the Transactions.

Section 5.4 SEC Reports; Financial Statements; Undisclosed Liabilities.

(a) Acquiror is a "reporting issuer" under the Federal Securities Laws, and is not in default of any material requirements of any applicable Securities Laws or the rules and regulations of the SEC or Nasdaq. Acquiror has not taken any action to cease to be a reporting issuer nor, except as set forth on Section 5.4(a) of the Acquiror Disclosure Schedules, has Acquiror received notification from the SEC, Nasdaq or any other Governmental Entity seeking to revoke the reporting issuer status of Acquiror. Except as set forth on Section 5.4(a) of the Acquiror Disclosure Schedules, no delisting, suspension of trading in or cease trading order with respect to any of its securities and, to the knowledge of Acquiror, no inquiry, investigation or other Proceeding of the SEC, Nasdaq or any other Governmental Entity, is pending, in effect or ongoing or threatened. The Acquiror Common Stock is listed on Nasdaq and trading of the Acquiror Common Stock is not currently halted or suspended. Acquiror does not have any securities listed for trading on any securities exchange other than Nasdaq. Acquiror is not subject to any cease trade or other order of the SEC, Nasdaq or any other Governmental Entity, and, to the knowledge of the Acquiror, no investigation or other Proceeding involving the Acquiror that may operate to prevent or restrict trading of any securities of the Acquiror is currently in progress or pending before the SEC, Nasdaq or any other Governmental Entity. Acquiror has timely filed or furnished all Acquiror SEC Reports required to be filed or furnished by Acquiror under applicable Federal Securities Laws. As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) (i) the Acquiror SEC Reports complied in all material respects with the applicable requirements of the Federal Securities Laws, including, in each case, the rules and regulations promulgated thereunder and (ii) none of the Acquiror SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Acquiror has not filed any confidential filings (including redacted filings) filed to or furnished with, as applicable, the SEC, Nasdaq or any other Governmental Entity. There are no outstanding or unresolved comments in comment letters from the SEC, Nasdaq or any other Governmental Entity with respect to any of the Acquiror SEC Reports and, to the knowledge of Acquiror, neither Acquiror nor any of the Acquiror SEC Reports is the subject of an ongoing audit, review, comment or investigation by the SEC, Nasdaq or any other Governmental Entity. Acquiror has made available to the Company true, correct and complete copies of all written correspondence between the SEC, on the one hand, and any Acquiror Group Member, on the other hand, occurring since its initial public offering. No Subsidiary of Acquiror is required to file any form, report, schedule, statement or other document with the SEC.

(b) The financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Acquiror SEC Reports (i) have been prepared in a manner consistent with the books and records of the Acquiror Group, (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and at the dates indicated (except as may be indicated in the notes thereto and except with respect to unaudited statements as permitted by the SEC on Form 8-K, Form 10-Q or any successor or like form under the Exchange Act), (iii) comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto and (iv) fairly present in all material respects the consolidated financial position of the Acquiror Group as of the dates thereof and their respective consolidated results of operations, cash flows and changes in stockholders' equity for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments that were not, or are not expected to be, material in amount). Since January 1, 2019, Acquiror has not made any material change in the accounting practices or policies applied in the preparation of its financial statements, except as required by GAAP, SEC rule or policy or applicable Law or as otherwise disclosed in the financial statements in the Acquiror SEC Reports.

(c) Acquiror has established and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Such disclosure controls and procedures are designed to ensure that information relating to the Acquiror Group required to be disclosed in Acquiror's periodic and current reports under the Exchange Act, is made known to Acquiror's chief executive officer and chief financial officer by others within those entities to allow timely decisions regarding required disclosures as required under the Exchange Act. The chief executive officer and chief financial officer of Acquiror have evaluated the effectiveness of Acquiror's disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable Acquiror SEC Report that is a report on Form 10-K or Form 10-Q, or any amendment thereto, their conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation.

(d) The Acquiror Group has established and maintain a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that is effective in providing reasonable assurances regarding the reliability of Acquiror's financial reporting and the preparation of Acquiror's financial statements for external purposes in accordance with GAAP. Acquiror has disclosed, based on its most recent evaluation of its internal control over financial reporting prior to the date hereof, to its auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of Acquiror's internal control over financial reporting that are reasonably likely to adversely affect the Acquiror's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Acquiror's internal control over financial reporting. All significant deficiencies or material weaknesses identified in management's assessment of internal control over financial reporting as of and for the fiscal year ended on December 31, 2021 are set forth in the Acquiror's annual report on Form 10-K for that period, and no other such deficiency or weakness has been identified since such date.

(e) Without limiting the generality of Section 5.4(a), (i) Marcum LLP has not resigned or been dismissed as independent public accountants of Acquiror as a result of or in connection with any disagreement with Acquiror on a matter of accounting principles or practices, financial statement disclosure or auditing scope and procedure, (ii) since its initial public offering, no Acquiror Group Member nor, to the knowledge of Acquiror, any director, officer, employee, auditor, accountant or representative of any Acquiror Group Member has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Acquiror Group or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that any Acquiror Group Member has engaged in questionable accounting or auditing practices, (iii) no executive officer of Acquiror has failed in any respect to make, without qualification, the certifications required of him under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any form, report or schedule filed by Acquiror with the SEC, (iv) since its initial public offering, no attorney representing any Acquiror Group Member, whether or not employed by an Acquiror Group Member, has reported evidence of a material violation of Securities Laws, breach of fiduciary duty or similar violation by any Acquiror Group Member or any of their respective officers, directors, employees or agents to the Acquiror Board or any committee thereof or to any director or officer of any Acquiror Group Member and (v) no enforcement action has been initiated or, to the knowledge of Acquiror, threatened against Acquiror by the SEC relating to disclosures contained in any Acquiror SEC Report.

(f) No Acquiror Group Member is a party to, or is subject to any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among any Acquiror Group Member, on the one hand, and any unconsolidated Affiliate, on the other hand), including any structured finance, special purpose or limited purpose entity or Person, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act), in each case, where the result, purpose or effect of such Contract is to avoid disclosure of any material transaction involving, or material Liabilities of, any Acquiror Group Member in Acquiror's published financial statements or the Acquiror SEC Reports, or that would otherwise be required to be disclosed under Item 303 of Regulation S-K under the Exchange Act.

(g) No Acquiror Group Member has extended or maintained credit, arrange for the extension of credit, modified or renewed an extension of credit, in the form of a personal loan or otherwise, to or for any director or executive officer of Acquiror.

(h) No Acquiror Group Member has any Liabilities that are not reflected or adequately reserved for in the unaudited consolidated balance sheet of the Acquiror Group as at September 30, 2022 included in the Quarterly Report on Form 10-Q filed by the Company with the SEC on November 14, 2022 (without giving effect to any amendment thereto filed on or after the date hereof), except (i) for Liabilities incurred in the ordinary course of business consistent with past practice since September 30, 2022, none of which is a Liability for breach of contract, breach of warranty, tort, infringement, or violation of Law and all of which will be transferred or paid and satisfied in full in connection with the Sale Transaction and the Wind Down or (ii) for Liabilities incurred in connection with the negotiation, preparation or execution of this Agreement or any Ancillary Documents or the consummation of the Transactions.

(i) As of the date of this Agreement, the Acquiror Group Members only have Indebtedness as set forth on Section 5.4(i) of the Acquiror Disclosure Schedules.

Section 5.5 Consents and Requisite Governmental Approvals; No Violations.

(a) Except as set forth on Section 5.5(a) of the Acquiror Disclosure Schedules, no Consent of or with any Governmental Entity is required on the part of any Acquiror Group Member with respect to an Acquiror Party's execution, delivery or performance of its obligations under this Agreement or the Ancillary Documents to which it is or will be party or the consummation of the Transactions, except for (i) the filing of the Certificate of Merger in accordance with the DGCL, (ii) the Proxy Statement and the Form S-4, (iii) the Nasdaq Listing Application and Nasdaq Approval, or (iv) any other Consents the absence of which would not, individually or in the aggregate, be material to the Acquiror Group, taken as a whole, or would not have an Acquiror Impairment Effect.

(b) None of the execution, delivery or performance by an Acquiror Party of this Agreement or the Ancillary Documents to which an Acquiror Party is or will be a party or the consummation of the Transactions will (i) contravene or conflict with any provision of the Governing Documents of any Acquiror Group Member, (ii) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, or result in the termination or acceleration of, or a right of termination, Consent, cancellation, amendment, modification, suspension, revocation, acceleration or amendment under, accelerate the performance required by, or result in the acceleration or trigger of any payment, posting of collateral (or right to require the posting of collateral), time of payment, vesting or increase in the amount of any compensation or benefit payable pursuant to, any of the terms, conditions or provisions of any Acquiror Material Contract to which any Acquiror Group Member is a party or by which any of their respective assets or properties may be bound or affected or any Permit held by any Acquiror Group Member, (iii) violate, or constitute a breach under, any Order or applicable Law to which any Acquiror Group Member or any of its properties or assets are bound or (iv) result in the creation of any Lien upon any of the assets or properties (other than any Permitted Liens) or Equity Securities of any Acquiror Group Member, except, in the case of any of clauses (ii) through (iv) above, as would not, individually or in the aggregate, be material to the Acquiror Group, taken as a whole, or would not have an Acquiror Impairment Effect.

Section 5.6 Permits. The Acquiror Group Members hold, and since January 1, 2019, have held all Permits that are required to own, lease or operate their properties and assets and to conduct their respective businesses, except where the failure to hold or obtain the same would not, individually or in the aggregate, be material to the Acquiror Group, taken as a whole (the "Acquiror Material Permits"). Each Acquiror Material Permit is in full force and effect in accordance with its terms, no written notice of revocation, cancellation or termination of any Acquiror Material Permit has been received by any Acquiror Group Member since January 1, 2019 that has not been withdrawn and no Proceeding in respect of any violation of any Acquiror Material Permit by any Acquiror Group Member is pending or, to Acquiror's knowledge, threatened against any

Acquiror Group Member.

Section 5.7 Acquiror Material Contracts.

(a) Section 5.7(a) of the Acquiror Disclosure Schedules sets forth, as of the date of this Agreement, a true and complete list of the following Contracts to which any Acquiror Group Member is a party and that will remain with the Acquiror Group following the closing of the Sale Transaction (together with all material amendments, waivers or other changes thereto) (each Contract required to be set forth on Section 5.7(a) of the Acquiror Disclosure Schedules, each Contract required to be set forth on Section 5.12(c)(i) and (ii) of the Acquiror Disclosure Schedules, each Contract required to be set forth on Section 5.20 of the Acquiror Disclosure Schedules and each Contract required to be set forth on Section 5.21 of the Acquiror Disclosure Schedules, collectively, the "Acquiror Material Contracts"):

(i) any Contract relating to Indebtedness or any Contract requiring any Acquiror Group Member to guarantee the Liabilities of any Person (other than an Acquiror Group Member) or pursuant to which any Person (other than an Acquiror Group Member) has guaranteed the Liabilities of an Acquiror Group Member;

(ii) except for the Sale Transaction Agreements, any Contract for the disposition of any portion of the assets or business of any Acquiror Group Member or for the acquisition by an Acquiror Group Member of the assets or business of any other Person, or under which an Acquiror Group Member has any continuing obligation with respect to an "earn-out", contingent purchase price or other contingent or deferred payment obligation;

(iii) any lease, rental or occupancy agreement, license, installment and conditional sale agreement and any other Contract with outstanding obligations that (A) provides for the ownership of, leasing of, occupancy of, title to, use of, or any leasehold or other interest in any real or personal property and (B) other than in the case of Contracts with respect to real property or any interest therein, involves aggregate payments in excess of $200,000 in any calendar year;

(iv) any Contract for any joint venture, partnership, strategic alliance or similar relationship;

(v) any Contract that (A) limits or purports to limit, in any material respect, the freedom of any Acquiror Group Member to engage or compete in any line of business or with any Person or in any area or that would so limit or purport to limit the operations of any Company Group Member or any of its Affiliates after the Closing, (B) contains any exclusivity, "most favored nation" or similar provisions, obligations or restrictions or (C) contains any other provisions restricting or purporting to restrict the ability of any Acquiror Group Member, directly or indirectly through third parties, in any material respect or that would so limit or purports to limit, in any material respect, any Company Group Member or any of its Affiliates after the Closing;

(vi) any Contract requiring any future capital commitment or capital expenditure (or series of capital expenditures) by any Acquiror Group Member in an amount in excess of (A) $200,000 annually or (B) $1,000,000 over the life of the agreement;

(vii) except for the Exchange Agreements, any Contract under which an Acquiror Group Member has, directly or indirectly, made or agreed to make any loan, advance, or assignment of payment to any Person or made any capital contribution to, or other investment in, any Person (other than any Acquiror Group Member);

(viii) any Contract (A) for the employment or engagement of any current director, manager, officer, employee, or other individual service provider of an Acquiror Group Member whose annual base salary (or, in the case of an individual other than an employee, annual base compensation) is in excess of $150,000, or (B) providing for any transaction, retention, change of control or severance payments in excess of $150,000 to any current director, manager, officer, employee, or other individual service provider of an Acquiror Group Member;

(ix) any Contract that constitutes a collective bargaining agreement or any other agreement executed between an Acquiror Group Member and a labor union or similar organization;

(x) any settlement, conciliation or similar Contract (A) the performance of which would be reasonably likely to involve any payments after the date of this Agreement, (B) with a Governmental Entity or (C) that imposes, at any time in the future, any material, non-monetary obligations on an Acquiror Group Member (or any Company Group Member or any of its Affiliates after the Closing);

(xi) any Contract that is a currency or interest hedging arrangement;

(xii) any other Contract the performance of which requires either (A) annual payments by an Acquiror Group Member in excess of $200,000 or (B) aggregate payments by an Acquiror Group Member in excess of $1,000,000 over the life of the Contract and, in each case, that is not terminable by such Acquiror Group Member without penalty upon less than thirty (30) days' prior written notice; and

(xiii) any commitment to enter into agreement of the type described in clauses (i) through (xii) of this Section 5.7(a).

(b) (i) Each Acquiror Material Contract is valid and binding on, and enforceable against, the Acquiror Group Member party thereto and, to Acquiror's knowledge, the counterparty thereto, and is in full force and effect, in each case subject to the Enforceability Exceptions, (ii) the Acquiror Group Member party thereto and, to Acquiror's knowledge, the counterparties thereto, are not in, or alleged to be in, material breach of, or material default under, any Acquiror Material Contract, (iii) since January 1, 2019 through the date of this Agreement, no Acquiror Group Member has received or given any written claim or notice of breach of or default or notice of termination under any Acquiror Material Contract, and (iv) to Acquiror's knowledge, no event has occurred which individually or together with other events, would reasonably be expected to result in a material breach of or a material default under any Acquiror Material Contract (in each case, with or without notice or lapse of time or both). True and complete copies of the Acquiror Material Contracts have been delivered to or made available to the Company or its Representatives.

Section 5.8 Absence of Changes. During the period beginning on October 1, 2022 and ending on the date of this Agreement, (a) no Acquiror Material Adverse Effect or Acquiror Impairment Effect has occurred and (b) except for any Pandemic Measures, (i) the Acquiror Group Members have conducted their respective businesses in the ordinary course of business consistent with past practice and (ii) except for entering into this Agreement and the Sale Transaction Agreements or as set forth on Section 5.8(b)(ii) of the Acquiror Disclosure Schedules, no Acquiror Group Member has taken any action that would require the consent of the Company if taken during the period from the date of this Agreement until the Closing pursuant to Section 6.1(b).

Section 5.9 Litigation. Except as set forth in Section 5.9 of the Acquiror Disclosure Schedules, there is (and since January 1, 2019 there has been) no Proceeding pending or, to Acquiror's knowledge, threatened against any Acquiror Group Member or any of their properties, rights or assets, or to Acquiror's knowledge, any of their respective directors, managers or employees in their capacities as such, that, if adversely decided or resolved, has been or would reasonably be expected to be, individually or in the aggregate, material to any Acquiror Group Member or would have an Acquiror Impairment Effect. No Acquiror Group Member or any of their respective material properties or assets is subject to any Order that would reasonably be expected to be materially adverse to any Acquiror Group Member or would have an Acquiror Impairment Effect. No Acquiror Group Member is party to a settlement or similar agreement regarding any of the matters set forth in the two preceding sentences that contains any ongoing obligations, restrictions or Liabilities (of any nature) that would reasonably be expected to be, individually or in the aggregate, material to such Acquiror Group Member or would have an Acquiror Impairment Effect.

Section 5.10 Compliance with Applicable Law. The Acquiror Group Members (a) conduct (and since January 1, 2019 have conducted) their respective businesses in accordance with all applicable Laws, Orders and Permits and are not and during such period have not been in violation of any such Law or Order or the terms of any Permit and (b) have not received any written communications from a Governmental Entity or other Person and, to Acquiror's knowledge, there is no such pending communication, that alleges that any Acquiror Group Member is not in compliance with any such Law, Order, or Permit, except in each case of clauses (a) and (b), as would not, individually or in the aggregate, be material to the Acquiror Group, taken as a whole, or would not have an Acquiror Impairment Effect.

Section 5.11 Environmental Matters.

(a) Except as would not, individually or in the aggregate, be material to the Acquiror Group, taken as a whole, or have an Acquiror Impairment Effect:

(i) each Acquiror Group Member is, and has been since January 1, 2018, in compliance with all applicable Environmental Laws;

(ii) since January 1, 2018, no Acquiror Group Member has received any written notice or communication from any Governmental Entity or any other Person asserting any actual, alleged, or potential violation in any respect of, or a failure to comply in any respect with, any Environmental Laws by an Acquiror Group Member;

(iii) no Acquiror Group Member has generated, treated, stored, disposed of, arranged for, transported, released, or otherwise handled any Hazardous Substances in a manner that would reasonably be expected to give rise to any Liability under any Environmental Laws;

(iv) there has been no release by any Acquiror Group Member or for which an Acquiror Group Member would reasonably be expected to be liable by Contract or by operation of Law, of any Hazardous Substance at, under, from or to any facility or real property currently or formerly owned, leased or operated by an Acquiror Group Member; and

(v) no Acquiror Group Member has assumed, whether by contract or operation of law, or provided an indemnity regarding, the liability of any other Person under any Environmental Laws.

(b) Acquiror has made available to the Company copies of all material environmental, health and safety reports and similar documents that were prepared by or for any Acquiror Group Member, including by third parties relating to the operations, properties or facilities of any Acquiror Group Member, since January 1, 2018, as well as material correspondence with any Person regarding any actual or alleged compliance with or Liability under any Environmental Law or regarding the release or management of any Hazardous Substance, in either case concerning the business or the properties or operations of any Acquiror Group Member.

Section 5.12 Intellectual Property.

(a) Section 5.12(a) of the Acquiror Disclosure Schedules sets forth a true and complete list of all (i) Acquiror Registered Intellectual Property and (ii) material Acquiror Software. Section 5.12(a) of the Acquiror Disclosure Schedules lists, for each item of Acquiror Registered Intellectual Property (A) the record owner of such item, (B) the jurisdictions in which such item has been issued or registered or filed, (C) the issuance, registration or application date, as applicable, for such item and (D) the issuance, registration or application number, as applicable, for such item.

(b) Each item of Acquiror Owned Intellectual Property is subsisting, valid, and to Acquiror's knowledge, enforceable. The Acquiror Group has used reasonable efforts to maintain and protect all Acquiror Owned Intellectual Property. No item of the Acquiror Registered Intellectual Property has been forfeited, cancelled or abandoned, or has expired or lapsed. None of the Acquiror Owned Intellectual Property is the subject of any pending Proceedings and, to Acquiror's knowledge, no such Proceedings are threatened by any Governmental Entity or any other Person.

(c) An Acquiror Group Member solely and exclusively owns all right, title and interest in and to all Acquiror Owned Intellectual Property, free and clear of all Liens (other than Permitted Liens). Section 5.12(c)(i) of the Acquiror Disclosure Schedules sets forth a list of all currently-effective Contracts pursuant to which an Acquiror Group Member has been granted a right or license to any Intellectual Property Rights other than Contracts for commercially available off-the shelf Software or Software subject to shrink wrap licenses entered into in the ordinary course of business (the Contracts required to be listed on Section 5.12(c)(i) of the Acquiror Disclosure Schedules, collectively, "Acquiror Inbound Licenses"). Section 5.12(c)(ii) of the Acquiror Disclosure Schedules sets forth a list of all currently-effective Contracts pursuant to which an Acquiror Group Member (i) has granted another Person a right or license to Acquiror Owned Intellectual Property; and (ii) to the extent not scheduled pursuant to the foregoing (i), has granted another Person a covenant not to sue with respect to any Acquiror Owned Intellectual Property. The applicable Acquiror Group Member has, and will continue to have immediately after the Closing, valid rights under all Acquiror Inbound Licenses to use, sell and license, as the case may be, all Acquiror Licensed Intellectual Property as the same is currently used, sold or licensed by the applicable Acquiror Group Member as of the date of this Agreement. The Acquiror Intellectual Property comprises all Intellectual Property Rights material to the businesses of the Acquiror Group and constitutes all of the Intellectual Property Rights necessary and sufficient for the Acquiror Group's conduct of their businesses as currently conducted, free and clear of all Liens (other than Permitted Liens).

(d) The Acquiror Group has taken steps consistent with standard industry practices, and has taken no less than reasonable care, to safeguard and maintain the secrecy of any trade secrets and other material confidential information owned, possessed or stored by or otherwise under the control of, the Acquiror Group. To Acquiror's knowledge, no director, manager or employee of or contractor to any Acquiror Group Member has disclosed any trade secrets or material confidential information of the Acquiror Group to any other Person unless such disclosure was under an appropriate, valid and binding written non-disclosure agreement containing appropriate limitations and protections on use and disclosure. All present and former Acquiror Group employees and independent contractors who independently or jointly contributed to or otherwise participated in the authorship, invention, creation, improvement, modification or development of any Acquiror Owned Intellectual Property have agreed to maintain and protect

the trade secrets and confidential information of the applicable Acquiror Group Member.

(e) The conduct and operation of the businesses of the Acquiror Group, as currently conducted, does not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights of any Person, and has not infringed upon, misappropriated or otherwise violated any Intellectual Property Rights of any Person. To Acquiror's knowledge, no Person is infringing, misappropriating or otherwise violating any Acquiror Owned Intellectual Property. No Acquiror Group Member has made any written claim against any Person alleging any infringement, misappropriation or other violation of any Acquiror Owned Intellectual Property.

Section 5.13 Data Privacy and Security.

(a) There is not currently pending or, to Acquiror's knowledge, threatened, and there has not since January 1, 2019 been any, Proceeding against any Acquiror Group Member initiated by (i) the United States Federal Trade Commission, any state attorney general or similar state official; (ii) any other Governmental Entity, foreign or domestic; (iii) any regulatory entity, privacy regulator or otherwise, or (iv) any other Person, in each case, with respect to privacy, cybersecurity, and, to Acquiror's knowledge, there are no facts upon which such a Proceeding could be based.

(b) Except as set forth on Section 5.13 of the Acquiror's Disclousre Schedules, there have not been any actual, suspected, or alleged material Security Incidents or actual or alleged claims related to material Security Incidents, and, to Acquiror's knowledge, there are no facts or circumstances which could reasonably serve as the basis for any such allegations or claims. There are no data security, information security, or other technological vulnerabilities with respect to the Acquiror Group's services or with respect to the Acquiror IT Systems that would have a materially adverse impact on their operations or cause a material Security Incident.

(c) The Acquiror Group Members own or have license to use pursuant to an Acquiror Material Contract the Acquiror IT Systems as necessary to operate their respective businesses as currently conducted and such Acquiror IT Systems are sufficient for the operation of their respective businesses as currently conducted. The Acquiror Group Members have back-up and disaster recovery arrangements, procedures and facilities for the continued operation of its businesses in the event of a failure of the Acquiror IT Systems that are, in the reasonable determination of Acquiror, commercially reasonable and in accordance in all material respects with standard industry practice. Since January 1, 2019, there has not been any material disruption, failure or, to Acquiror's knowledge, unauthorized access with respect to any of the Acquiror IT Systems that has not been remedied, replaced or mitigated in all material respects. To Acquiror's knowledge, none of the Acquiror IT Systems contain any worm, bomb, backdoor, trap doors, Trojan horse, spyware, keylogger software, clock, timer or other damaging devices, malicious codes, designs, hardware component, or software routines that causes the Acquiror Software or any portion thereof to be erased, inoperable or otherwise incapable of being used, either automatically, with the passage of time or upon command by any unauthorized person.

(d) The Acquiror Group Members have, and since January 1, 2019 have had, in place reasonable and appropriate administrative, technical, physical and organizational measures and safeguards to (i) ensure the integrity, security, and the continued, uninterrupted, and error-free operation of the Acquiror IT Systems, and the confidentiality of the source code of any Acquiror Software, and (ii) to protect Business Data against loss, damage, and unauthorized access, use, modification, or other misuse.

Section 5.14 Compliance with International Trade & Anti-Corruption Laws

(a) No Acquiror Group Member or any of their respective officers, directors, or employees, and to Acquiror's knowledge, none of the Acquiror Group's Representatives acting for or on behalf of any Acquiror Group Member, is or since January 1, 2018 has been, (i) a Person named on any Sanctions Laws-related list of designated or restricted Persons maintained by a Governmental Entity; (ii) located, organized or resident in, or a blocked national of, a country or territory which is itself the subject of or target of any Sanctions Laws or part of or acting for or on behalf of a Governmental Entity that is a target of any Sanctions Laws; (iii) an entity owned, directly or indirectly, by one or more Persons described in clause (i) or (ii); (iv) otherwise engaging in dealings with or for the benefit of any Person described inclauses (i) through (iii) or any country or territory which is or since January 1, 2018 has been, the subject of or target of any Sanctions Laws or (v) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or U.S. anti-boycott Laws.

(b) No Acquiror Group Member or any of their respective officers, directors, or employees, and to Acquiror's knowledge, none of the Acquiror Group's Representatives acting for or on behalf of the Company Group, has since January 1, 2018 (i) violated any Anti-Corruption Laws; (ii) offered, paid, authorized or promised to pay anything of value, regardless of form, to any Person for the purpose of influencing any act or decision of such Person or securing an improper advantage to assist any Acquiror Group Member in obtaining or retaining business; or (iii) established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties, or used or are using any corporate funds for any illegal contributions, gifts, entertainment, travel or other unlawful expenses, in breach of any Anti-Corruption Law.

Section 5.15 Employee Benefit Plans.

(a) Section 5.15(a) of the Acquiror Disclosure Schedules sets forth a true and complete list of all material Acquiror Employee Benefit Plans.

(b) True and complete copies of the following documents, with respect to each material Acquiror Employee Benefit Plan, where applicable, have previously been made available to the Company: (i) the current plan and trust documents (or for unwritten Acquiror Employee Benefit Plans a written description of the material terms of such Acquiror Employee Benefit Plan), each as amended through the date of this Agreement and, in the case of individual Contracts, form(s) thereoft; (ii) the most recent IRS determination or opinion letter; (iii) the most recently filed Form 5500; (iv) the most recent actuarial valuation report;; and (v) any material, non-routine correspondence to and from any Governmental Entity prior to the date hereof since January 1, 2020.

(c) Each Acquiror Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination or approval letter from the Internal Revenue Service with respect to such qualification (or is the subject of a favorable opinion letter from the Internal Revenue Service on the form of such Acquiror Employee Benefit Plan) to the effect that such Acquiror Employee Benefit Plan satisfies the requirements of Section 401(a) of the Code and that its related trust is exempt from taxation under Section 501(a) of the Code; and, to Acquiror's knowledge, there are no facts or circumstances that could reasonably be expected to cause the loss of such qualification or the imposition of any material Liability, penalty or tax under ERISA, the Code or other applicable Laws.

(d) Each Acquiror Employee Benefit Plan is and has been established, operated and administered in all material respects in accordance with applicable Laws, including ERISA and the Code, and its terms. No Proceeding (other than those relating to routine claims for benefits) is pending or, to Acquiror's knowledge, threatened with respect to any Acquiror Employee Benefit Plan, and, to the Acquiror's knowledge, there are no facts that reasonably would be expected to give rise to any such Proceedings. There has been no "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to any Acquiror Employee Benefit Plan which would reasonably be expected to give rise to any material Liability to any Acquiror Group Member. All payments or contributions required to have been made by the applicable due date with respect to all Acquiror Employee Benefit Plans either have been made or have been accrued, in either event, in all material respects in accordance with the terms of the applicable Acquiror Employee Benefit Plan and applicable Law.

(e) Neither Acquiror nor any ERISA Affiliate of Acquiror maintains, contributes to, or is required to contribute to, or has, or has had in the last five (5) years, any Liability (whether contingent or otherwise) with respect to: (i) any employee benefit plan that is or was subject to Title IV of ERISA, Section 412 of the Code, or Section 302 of ERISA; (ii) a Multiemployer Plan; (iii) any "multiple employer plan" (within the meaning of Section 4063 or 4064 of ERISA); (iv) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA; or (v) a "voluntary employees" beneficiary association" within the meaning of Section 501(c)(9) of the Code. Except as set forth in Section 5.15(e) of the Acquiror Disclosure Schedules, each Acquiror Employee Benefit Plan that provides health or life benefits is fully insured by a third party insurance company.

(f) Except as set forth in Section 5.15(f) of the Acquiror Disclosure Schedules, no Acquiror Employee Benefit Plan provides postretirement health or life insurance benefits to any Acquiror Group current or former employee, officer, or director, or any dependent or beneficiary thereof, except as otherwise required under state or federal benefits continuation laws (e.g., COBRA) for which the covered individual pays the full cost of coverage.

(g) Except as set forth in Section 5.15(g) of the Acquiror Disclosure Schedules, neither the execution and delivery of this Agreement, nor the consummation of the Transactions (either alone or in combination with another event) would reasonably be expected to (i) result in any payment becoming due, or increase the amount of any compensation due, to any employee or former employee of any Acquiror Group Member; (ii) increase any benefits otherwise payable under any Acquiror Employee Benefit Plan; (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits; (iv) result in the payment of any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment," as defined in 280G(b)(1) of the Code; (v) result in the triggering or imposition of any restrictions or limitations on the rights of Acquiror to amend or terminate any Acquiror Employee Benefit Plan; (vi) entitle the recipient of any payment or benefit to receive a "gross up" payment for any income or other taxes that might be owed with respect to such payment or benefit; or (vii) result in an obligation to fund any benefits under an Acquiror Employee Benefit Plan.

(h) Neither Acquiror, nor any ERISA Affiliate of Acquiror, has incurred or, to Acquiror's knowledge, could reasonably be expected to have any material Liability for Taxes under Sections 4975 through 4980 or Sections 4980A through 4980I of the Code. Acquiror maintains a health plan that satisfies in all material respects the requirements for "minimum essential coverage" under Section 4980H(a) of the Code, as applicable.

(i) No Acquiror Employee Benefit Plan is subject to the laws of any jurisdiction outside the United States.

(j) Each Acquiror Employee Benefit Plan can be terminated at any time for any reason or no reason by Acquiror without any past, present or future Liability or obligation (other than solely administrative expenses related to such termination). No consents, approvals or other actions of any third party (other than solely administrative processes) are required to effect such termination.

Section 5.16 Labor Matters.

(a) Section 5.16(a) of the Acquiror Disclosure Schedules separately sets forth all of the Acquiror Group employees as of the date of this Agreement, including for each such employee: (i) name; (ii) employer; (iii) job title; (iv) Fair Labor Standards Act classification; (v) work location (city and state); (vi) compensation (including annual base salary (if paid on a salary basis), hourly rate (if paid on an hourly basis), or commission rate (if paid on a purely commission basis), as applicable); (vii) 2021 incentive compensation; (viii) date of hire; (ix) fringe benefits (other than employee benefits applicable to all employees, which material benefits are set forth on a separate list on Section 5.15(a) of the Acquiror Disclosure Schedules); and (x) status (i.e., active or inactive and if inactive, the type of leave and estimated duration). To Acquiror's knowledge, no employee is a party to, or is otherwise bound by, any agreement or arrangement, including any confidentiality or non-competition agreement, that in any way adversely affects or restricts the performance of such employee's duties. To Acquiror's knowledge, no employee, manager, director or officer of any Acquiror Group Member intends to terminate his or her employment with such Acquiror Group Member.

(b) To Acquiror's knowledge, each employee of the Acquiror Group is (i) a United States citizen or lawful permanent resident of the United States, (ii) a lawful permanent resident, or (iii) an alien authorized to work in the United States either specifically for the Acquiror Group or for any United States employer. Acquiror has completed a Form I-9 (Employment Eligibility Verification) for each Acquiror Group employee and each such Form I-9 has since been updated as required by applicable Law and is correct and complete in all material respects as of the date hereof. No Acquiror Group employee has a principal place of employment outside the United States nor is subject to the labor and employment Laws of any country other than the United States.

(c) The Acquiror Group is, and since January 1, 2019 has been, in compliance in all material respects with all applicable Laws respecting labor and employment matters, withholding and remitting of taxes, and information reporting, including all contractual commitments and all such Laws relating to fair employment practices, pay equity, the classification of independent contractors, workplace safety and health, work authorization and immigration, unemployment compensation, workers' compensation, affirmative action, terms and conditions of employment, employee leave, collective bargaining, discrimination, civil rights, collection and payment of social security Taxes and similar Taxes, and wages and hours, including payment of minimum wages and overtime. The Acquiror Group has, or will have no later than the Closing Date, paid all accrued salaries and wages of the Acquiror Group employees due to be paid through the Closing Date. No Acquiror Group Member is delinquent in any payments to any employee for any wages, salaries, commissions, bonuses, severance, fees or other direct compensation due to be paid with respect to any services performed for it. No Acquiror Group Member is, and has not since January 1, 2019, been a government contractor.

(d) Currently and since January 1, 2019, no Acquiror Group Member has been party to or, to Acquiror's knowledge, the subject of any Proceeding relating to employment or labor matters concerning the employees or other service providers of any Acquiror Group Member, and no such matters are pending or, to Acquiror's knowledge, have been threatened against any Acquiror Group Member.

(e) Since January 1, 2019, the Acquiror Group has not experienced a "plant closing," "business closing," or "mass layoff" or similar group employment loss as defined in the federal WARN Act or any similar state, local or foreign Law affecting any site of employment of the Acquiror Group or one or more facilities or operating units within any site of employment or facility of the Acquiror Group.

(f) No Acquiror Group Member is a party to or bound by any collective bargaining agreements or other agreements with any labor organization, labor union, works council or other employee representative or any other Contract with a labor union, labor organization, works council, employee delegate, representative or other employee collective group, nor to Acquiror's knowledge is there any duty on the part of any Acquiror Group Member to bargain with any labor union, labor organization, works council, employee delegate, representative or other employee collective group. Since January 1, 2019, there has been no actual or, to Acquiror's knowledge, threatened unfair labor practice charges, material grievances, arbitrations, strikes, lockouts, work stoppages, slowdowns, picketing, hand billing or other material labor disputes against any Acquiror Group Member. To Acquiror's knowledge, since January 1, 2019, there have been no labor organizing activities with respect to any employees of the Acquiror Group.

(g) No employee layoff, facility closure or shutdown (whether voluntary or by Order), reduction-in-force, furlough, temporary layoff, material work schedule change, reduction in hours, or reduction in salary or wages by any Acquiror Group Member has occurred within the twenty-four (24) months prior to the date of this Agreement or has been announced as of the date of this Agreement as a result of COVID-19 or any Law, Order, directive, guidelines or recommendations by any Governmental Entity in connection with or in response to COVID-19.

(h) Since January 1, 2019, no allegations of sexual harassment or sexual misconduct have been made to any Acquiror Group Member against any director, manager, officer or executive employee of any Acquiror Group Member and, to Acquiror's knowledge, there have not been any such allegations.

(i) Section 5.16(i) of the Acquiror Disclosure Schedules contains a complete and accurate listing of the name and contact information of each Contractor who is expected to be or was paid more than $150,000 in any year by the Acquiror Group Members in the aggregate (an "Acquiror Material Contractor"). A copy of each Contract relating to the services an Acquiror Material Contractor provides to such Company Group Member has been provided to the Company. To Acquiror's knowledge, no Contractor used by any Acquiror Group Member is a party to, or is otherwise bound by, any agreement or arrangement with any third party, including any confidentiality or non-competition agreement, that in any way adversely affects or restricts the performance of such Contractor's duties for Acquiror. To Acquiror's knowledge, no current Acquiror Material Contractor used by the Acquiror Group intends to terminate his or her or its relationship with such Acquiror Group Member. No Acquiror Group Member has any obligation or Liability with respect to any Taxes (or the withholding thereof) in connection with any Contractor.

Section 5.17 Insurance. Section 5.17 of the Acquiror Disclosure Schedules sets forth a true and complete list of all policies or programs of insurance owned or held by, or for the benefit of, any Acquiror Group Member as of the date of this Agreement. All such policies are in full force and effect, all premiums due and payable thereon as of the date of this Agreement have been paid in full or accrued as of the date of this Agreement, and true and complete copies of all such policies have been made available to the Company. No Acquiror Group Member is in breach or default (including any such breach or default with respect to the payment of premiums or the giving of notice), and, to Acquiror's knowledge, no event has occurred which, with notice or the lapse of time or both, would constitute such a breach or default under, or permit termination, rescission or avoidance of, the policy, and to Acquiror's knowledge, no such action has been threatened. As of the date of this Agreement, no claim for coverage by any Acquiror Group Member is pending under any such policies as to which the relevant insurers have denied, disputed, or reserved the right to deny or dispute coverage.

Section 5.18 Tax Matters.

(a) The Acquiror Group has prepared and filed, or will prepare and file, all Tax Returns required to be filed by it on or before the Closing Date, all such Tax Returns are, or will be, true, complete and correct in all material respects and prepared in compliance with all applicable Laws and Orders. The Acquiror Group has paid, or will pay, all Taxes required to have been paid by it on or before the Closing Date regardless of whether shown on a Tax Return.

(b) The Acquiror Group has timely withheld and paid to the appropriate Tax Authority all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Person.

(c) No Acquiror Group Member is currently the subject of a Tax audit or examination, and no Acquiror Group Member has been notified of the commencement or anticipated commencement of any Tax audit or examination. All deficiencies asserted, or assessments made, against the Acquiror Group as a result of any examinations by any Tax Authority have been fully paid.

(d) No Acquiror Group Member has consented to extend or waive the time in which any Tax may be assessed or collected by any Tax Authority.

(e) The Liability for unpaid Taxes for each Acquiror Group Member for all periods ending on or before September 30, 2022 does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Acquiror Financial Statements. The Liability for unpaid Taxes for each Acquiror Group Member for all periods following the end of the most recent period covered by the Acquiror Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Acquiror Group (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).

(f) Section 5.18(f) of the Acquiror Disclosure Schedules sets forth (i) the Tax Returns each Acquiror Group Member for which examinations by Tax Authorities have been completed; and (ii) the Tax Returns of each Acquiror Group Member for which examinations by Tax Authorities are presently being conducted. Acquiror has delivered or made available to the Company copies of all federal, state, local, and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, each Acquiror Group Member for all Tax periods ending after January 1, 2019.

(g) No "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or non-U.S. income Tax Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been requested, entered into or issued by any Tax Authority with respect to the Acquiror Group.

(h) No Acquiror Group Member is nor has been a party to, or a promoter of, any "listed transaction" as defined in Section 6707A of the Code and Treasury Regulations Section 1.6011-4 (or any corresponding or similar provision of state, local or non-U.S. income Tax Law).

(i) There are no Liens for Taxes on any assets of the Acquiror Group other than Permitted Liens.

(j) No Acquiror Group Member (i) has been a member of an affiliated, combined, consolidated or unitary group filing a consolidated federal income Tax Return (other than a group the common parent of which was Acquiror and which includes only Acquiror Group Members) or (ii) has any Liability for the Taxes of any Person (other than other Acquiror Group Members) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or non-U.S. Law), as a transferee or successor, by Contract or otherwise.

(k) No claims have ever been made by any Tax Authority in a jurisdiction where an Acquiror Group Member does not file Tax Returns that the Acquiror Group Member is or may be subject to taxation by that jurisdiction.

(l) No Acquiror Group Member is a party to, or bound by, any Tax allocation, Tax sharing or Tax indemnity or similar agreements (other than agreements entered into in the ordinary course of business the primary purpose of which does not relate to Taxes).

(m) No Acquiror Group Member has a branch, permanent establishment (within the meaning of an applicable Tax treaty), or an office or fixed place of business in a country other than the country in which it is organized.

(n) Each Acquiror Group Member is treated as a corporation or a disregarded entity for U.S. federal income tax purposes and applicable state Tax purposes.

(o) No Acquiror Group Member will be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of: (i) any change in a method of accounting under Section 481 of the Code (or any similar provision of state, local or non-U.S. Law), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date; (ii) an installment sale or open transaction occurring on or prior to the Closing Date; (iii) a prepaid amount received on or before the Closing Date; (iv) any closing agreement under Section 7121 of the Code, or similar provision of state, local or non-U.S. Law; or (v) any election under Section 108(i) of the Code.

(p) No Acquiror Group Member has deferred any Taxes under Section 2302 of the CARES Act.

(q) Neither the execution and delivery of this Agreement nor the consummation of the Transactions (either alone or in conjunction with any other event) will result in the payment of any compensation or benefits to any person who would be a "disqualified individual" (as such term is defined in Treasury Regulations Section 1.280G-1) with respect to any Acquiror Group Member that could reasonably, individually or in combination with any other payment, constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code).

(r) There is no Contract covering any individual or entity treated as an individual included in the business or assets of the Acquiror Group that, individually or collectively, could give rise to the payment by any Acquiror Group Member that would not be deductible by reason of Section 162(m) of the Code.

(s) Each Acquiror Employee Benefit Plan that is a "nonqualified deferred compensation plan" (as defined under Section 409A(d)(1) of the Code) and is not exempt from Section 409A of the Code has a plan document that satisfies the requirements of Section 409A of the Code and has been operated in compliance with Section 409A of the Code and the terms of such plan document. Acquiror does not have any "gross-up" or indemnity obligation for Taxes imposed under Section 4999 or 409A of the Code.

Section 5.19 Acquiror PPP Loan. Acquiror (a) properly and validly obtained the Acquiror PPP Loan, (b) has complied with all applicable Laws with respect to the Acquiror PPP Loan, (c) properly utilized (and documented the utilization of) the proceeds of the Acquiror PPP Loan in accordance with all applicable Laws, and (d) properly and validly applied for forgiveness of the Acquiror PPP Loan pursuant to Section 1106 of the CARES Act, and the loan forgiveness applications were approved in full.

Section 5.20 Real and Personal Property.

(a) Owned Real Property. No Acquiror Group Member owns any interest in any real property.

(b) Leased Real Property. Section 5.20(b) of the Acquiror Disclosure Schedules sets forth a true and complete list of all Acquiror Leased Real Property and all Acquiror Real Property Leases (including street addresses, the date thereof and legal names of the parties thereto, to the extent such information exists for such Acquiror Leased Real Property) pursuant to which any Acquiror Group Member is a tenant or landlord as of the date of this Agreement. True and complete copies of all such Acquiror Real Property Leases have been made available to the Company. Acquiror or the applicable Subsidiary has a good, valid and enforceable leasehold interest in each Acquiror Leased Real Property free and clear of all Liens, except for Permitted Liens. The relevant Acquiror Group Member's possession and quiet enjoyment of the Acquiror Leased Real Property under each Acquiror Real Property Lease has not been disturbed and there are no material disputes with respect to such Acquiror Leased Real Property. To Acquiror's knowledge, no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute a breach or default under or permit the termination or modification of, or acceleration of rent under, such Acquiror Real Property Lease. Each Acquiror Group Member has performed all material obligations required to be performed by it under any Acquiror Real Property Lease, and no Acquiror Group Member has the present expectation or intention of not fully performing on a timely basis all material obligations required to be performed by such Acquiror Group Member under any Acquiror Real Property Lease. The Transactions, this Agreement and any Ancillary Document to be delivered at or before Closing do not require the consent of any other party relating to the Acquiror Leased Real Property, including from landlords under an Acquiror Real Property Lease, whether as a deemed "assignment" or otherwise, will not result in a breach of or default under any Acquiror Real Property Lease, will not give rise to any termination or recapture rights, and will not otherwise cause any such Acquiror Real Property Lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing. No Acquiror Group Member has subleased, licensed or otherwise granted any Person the right to use or occupy such Acquiror Leased Real Property or any portion thereof and no Acquiror Group Member has collaterally assigned or granted any other security interest in such Acquiror Real Property Lease or any interest therein.

(c) Real Property Condition. The relevant Acquiror Group Member has in each Acquiror Leased Real Property, in each case to the extent necessary to conduct their respective businesses, (i) direct or indirect legal access to public roads or valid irrevocable easements over private streets or private property for such ingress to and egress from all such buildings and structures and (ii) reasonable access to water supply, electrical connections, fire protection and other utilities necessary for the conduct of their respective businesses, all of which utilities are provided via public roads or via irrevocable appurtenant easements benefitting the Acquiror Leased Real Property. To Acquiror's knowledge, none of the structures on any Acquiror Leased Real Property materially encroaches upon real property of another Person, and no structure of any other Person materially encroaches upon any Acquiror Leased Real Property. No Acquiror Group Member has received any written notice from any Governmental Entity alleging of a violation of any Laws with respect to any of the Acquiror Leased Real Property and, to Acquiror's knowledge, the Acquiror Leased Real Property is not in violation of any Law, covenant, condition, restriction, easement, license, permit or agreement relating to any Acquiror Leased Real Property. There are no Orders pending nor, to Acquiror's knowledge, threatened against or affecting the Acquiror Leased Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain Proceedings or Proceeding to impose any special assessment to any Acquiror Leased Real Property or any material portion thereof, which would reasonably be expected to curtail or interfere with the use of such Acquiror Leased Real Property for the present conduct of their respective businesses. The buildings and other improvements constituting the Acquiror Leased Real Property are each in good condition and repair (ordinary wear and tear excepted) in all material respects and are fit for use in the ordinary course of their respective business, and all such buildings and improvements have been installed and maintained in all material respects in accordance with all applicable Laws. None of the Acquiror Leased Real Property has been damaged or destroyed by fire or other casualty that has not been restored. The Acquiror Leased Real Property identified in Section 5.20(b) of the Acquiror Disclosure Schedules comprise all of the real property used or intended to be used in, or otherwise related to, the respective businesses of the Acquiror Group.

(d) Personal Property.

(i) The Acquiror Group has good, valid and indefeasible title to, or a valid leasehold interest in or license or right to use, all of the material tangible assets and properties of the Acquiror Group reflected in the Acquiror Financial Statements or thereafter acquired by an Acquiror Group Member prior to the date hereof,

except for assets disposed of in the ordinary course of business.

(ii) The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property of the Acquiror Group are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

Section 5.21 Transactions with Affiliates. Section 5.21 of the Acquiror Disclosure Schedules sets forth all Contracts between (a) any Acquiror Group Member, on the one hand, and (b) any officer, director, manager, Affiliate or holder of Equity Securities of any Acquiror Group Member or, to Acquiror's knowledge, any Affiliate or family member of any of the foregoing, on the other hand (each Person identified in this clause (b), an "Acquiror Related Party"), other than Contracts with respect to an Acquiror Related Party's employment with or service as a director or manager to (including benefit plans and other ordinary course compensation from) Acquiror entered into in the ordinary course of business. No Acquiror Related Party (i) owns any interest in any material asset used in the businesses of the Acquiror Group, (ii) possesses, directly or indirectly, any material financial interest in, or is a director or executive officer of, any Person which is a supplier, lender, partner, lessor, lessee or other material business relation of any Acquiror Group Member or (iii) owes any material amount to, or is owed any material amount by, the Acquiror Group (other than ordinary course accrued compensation, employee benefits, employee or director expense reimbursement). All Contracts, arrangements, understandings, interests and other matters disclosed pursuant to this Section 5.21 are referred to herein as "Acquiror Related Party Transactions."

Section 5.22 Certain Information. The Proxy Statement and the Form S-4 will not, at the time they are filed with the SEC, at the time of any amendment or supplement thereto and at the time the Form S-4 (or any post-effective amendment or supplement) becomes effective under the Securities Act, at the time the Proxy Statement is first mailed to the Acquiror Stockholders and at the time of the Acquiror Stockholder Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading. The Proxy Statement and the Form S-4 will comply as to form in all material respects with the provisions of the Federal Securities Laws, the DGCL and any other applicable Law. Notwithstanding the foregoing, neither Acquiror nor Merger Sub makes any representation or warranty with respect to statements included or incorporated by reference in the Proxy Statement or the Form S-4 based on information supplied in writing by or on behalf of the Company specifically for inclusion therein.

Section 5.23 Takeover Laws; Rights Plan.

(a) No "moratorium," "fair price," "business combination," "control share acquisition" or similar provision of any state anti-takeover Law (collectively, "Takeover Laws") or any similar anti-takeover provision in the Governing Documents of Acquiror is, or at the Effective Time will be, applicable to this Agreement, the Merger or any of the other Transactions.

(b) There is no shareholder rights plan, "poison pill" anti-takeover plan or other similar device in effect to which Acquiror is a party or is otherwise bound.

Section 5.24 Brokers. Other than as set forth on Section 5.24 of the Acquiror Disclosure Schedules, no broker, finder, investment bank or other Person is entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions based upon arrangements made by or on behalf of Acquiror or any of its Affiliates for which any Acquiror Party has any obligation.

Section 5.25 Merger Sub Activities. Merger Sub was organized solely for the purpose of entering into this Agreement, the Ancillary Documents and consummating the Merger and the other Transactions, and has not engaged in any activities or business, other than those incident or related to or incurred in connection with its formation or the negotiation, preparation or execution of this Agreement or any Ancillary Documents, the performance of its covenants or agreements in this Agreement or any Ancillary Document or the consummation of the Transactions. Merger Sub has no Indebtedness.

Section 5.26 Sale Transaction and Wind Down.

(a) Pursuant to the Sale Transaction and the Wind Down, except as set forth in Section 5.26 of the Acquiror Disclosure Schedules (the "Retained Legacy Assets"), all assets used or held for use by the Acquiror Group in the Acquiror Legacy Business immediately prior to the Effective Time (other than cash and cash equivalents) will be divested by the Acquiror Group and no such assets (other than cash and cash equivalents) will be retained by any member of the Acquiror Group following completion of the Sale Transaction and the Wind Down.

(b) Pursuant to the Sale Transaction and the Wind Down, all Liabilities of the Acquiror Group arising out of, relating to or resulting from the Acquiror Legacy Business immediately prior to the Effective Time will be transferred or paid and satisfied in full, except for any Liabilities that may arise from the Retained Legacy Assets that are currently not known by the Acquiror Group ("Unknown Retained Liabilities"). Following the completion of the Sale Transaction and the Wind Down, no member of the Acquiror Group will have any Liabilities arising out or, relating to or resulting from the Acquiror Legacy Business, the Sale Transaction or the Sale Transaction Agreements, except for Unknown Retained Liabilities.

(c) Following the completion of the Sale Transaction and delivery of the resignations contemplated by Section 6.13(a)(ii), no member of the Acquiror Group will have any employees.

(d) To the knowledge of Acquiror, there are no facts or circumstances that could reasonably be expected to cause the Sale Transaction to not be timely consummated in accordance with the terms set forth in the Sale Transaction Agreements.

(e) (i) The Sale Transaction Agreements are valid and binding on, and enforceable against, the Acquiror Group Member party thereto and the counterparty thereto, and is in full force and effect, in each case subject to the Enforceability Exceptions, (ii) the Acquiror Group Member party thereto and the counterparties thereto, are not in, or alleged to be in, breach of, or default under, the Sale Transaction Agreements, (iii) no Acquiror Group Member has received or given any written claim or notice of breach of or default or notice of termination under the Sale Transaction Agreement, and (iv) no event has occurred which individually or together with other events, would reasonably be expected to result in a breach of or a default under any Sale Transaction Agreement (in each case, with or without notice or lapse of time or both). True and complete copies of the Sale Transaction Agreements have been delivered to or made available to the Company or its Representatives.

Section 5.27 Investigation; No Other Representations.

(a) Each Acquiror Party, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that (i) it has conducted its own independent review and analysis of, and, based thereon, has formed an independent judgment concerning the business, assets, condition, operations and prospects of the Company Group and (ii) it has been furnished with or given access to such documents and information about the Company Group and their respective businesses as it and its Representatives have deemed necessary to enable it to make an informed decision with respect to the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the Transactions.

(b) In entering into this Agreement and the Ancillary Documents to which it is or will be a party, each Acquiror Party has relied solely on its own investigation and analysis and the representations and warranties expressly set forth in Article 4 and in the Ancillary Documents to which it is or will be a party and no other representations or warranties of any Company Group Member or any other Person, either express or implied, and each Acquiror Party, on its own behalf and on behalf of its Representatives, acknowledges, represents, warrants and agrees that, except for the representations and warranties expressly set forth in Article 4 and in the Ancillary Documents to which it is or will be a party, none of the Company Group Members nor any other Person makes or has made any representation or warranty, either express or implied, in connection with or related to this Agreement, the Ancillary Documents or the Transactions.

ARTICLE 6
COVENANTS

Section 6.1 Conduct of Business.

(a) From and after the date of this Agreement until the earlier of the Closing and the termination of this Agreement in accordance with Article 8, each of Acquiror and the Company shall, and shall cause its respective Subsidiaries to, except as (i) expressly required by this Agreement, any Ancillary Document or the Sale Transaction Agreements, (ii) required by applicable Law (including any Pandemic Measures), (iii) set forth on Section 6.1(a) of the Company Disclosure Schedules or the Acquiror Disclosure Schedules, as applicable, or (iv) consented to in writing by the other Party, (A) operate such Party's business in the ordinary course consistent with past practice, and (B) use commercially reasonable efforts to maintain and preserve intact the business organization, assets, properties and material business relations of the Company Group Members and the Acquiror Group Members, as applicable, and keep available the services of their respective directors, managers, officers, key employees and Contractors. Unless doing so is impracticable due to emergency or urgent circumstances, each Party shall provide advance notice to and reasonably consult with the other Party prior to or promptly following the taking of any action that would be otherwise prohibited or restricted by this Section 6.1(a) but for clause (ii) above. Further, Acquiror shall provide the Company with written notice at least five Business Days prior to taking, or permitting any of its Subsidiaries to take, any action pursuant to clause (ii) above that the Company has reasonably determined is expressly required by the Sale Transaction Agreements. Such notice shall set forth, in reasonable detail, the action proposed to be taken. If the Company objects to Acquiror or any of its Subsidiaries taking such action during such five Business Day period, Acquiror and the Company shall consult with each other and MJF Purchaser in good faith to determine an alternative to the proposed action, and Acquiror will, and will use commercially reasonable efforts to cause MJF Purchaser to, consider in good faith any issues raised or alternatives proposed by the Company. If the Company can demonstrate that the taking of the proposed action by Acquiror or any of its Subsidiaries could reasonably be expected to cause any of the conditions set forth in Article 7 not to be satisfied, or the satisfaction of such conditions being materially delayed, or otherwise jeopardize the consummation of the Merger, then Acquiror and its Subsidiaries will not take the proposed action.

(b) Without limiting the generality of the foregoing, from and after the date of this Agreement until the earlier of the Closing and the termination of this Agreement in accordance with Article 8, each of the Company and Acquiror shall, except as (1) expressly required by this Agreement or any Ancillary Document, (2) required by applicable Law (including any Pandemic Measures), (3) set forth on Section 6.1(b) of the Company Disclosure Schedules or the Acquiror Disclosure Schedules, as applicable, or (4) consented to in writing by the other Party, not do, and shall not permit any of its Subsidiaries to do, any of the following:

(i) declare, set aside, make or pay a dividend on, or make any other distribution or payment in respect of, any Equity Securities of such Party, other than dividends or distributions to other Company Group Members or Acquiror Group Members, as applicable;

(ii) solely with respect to the Acquiror Group Members, directly or indirectly acquire, whether by merging or consolidating with, by purchasing a substantial portion of the assets of, by purchasing any Equity Securities of, or by any other manner, any business or any corporation, partnership, limited liability company, joint venture, association or other entity or Person or division thereof;

(iii) adopt any amendments, supplements, restatements or modifications to their respective Governing Documents, other than as required to effect the Redemptions, the Exchanges and the Reverse Split;

(iv) issue, deliver, sell, transfer, grant, pledge or otherwise directly or indirectly dispose of, or place any Lien (other than Permitted Liens) on, any (A) Equity Securities of any Company Group Member or Acquiror Group Member, as applicable, or (B) options, warrants or other rights to purchase or obtain any Equity Securities of any Company Group Members or Acquiror Group Members, as applicable, in each case after the Company Capitalization Freeze Date (with respect to the Company Group Members) or the Acquiror Capitalization Freeze Date (with respect to the Acquiror Group Members), as applicable;

(v) sell, assign, transfer, convey, lease, license, abandon or otherwise dispose of, any material assets, rights or properties (including Intellectual Property Rights), other than as contemplated by the Sale Transaction Agreements;

(vi) (A) solely with respect to the Acquiror Group Members, (1) incur, create or assume any Indebtedness, (2) modify, in any material respect, the terms of any Indebtedness or (3) assume, guarantee or endorse, or otherwise become responsible for, the obligations of any Person for Indebtedness and (B) solely with respect to the Company Group Members (1) incur, create or assume Indebtedness not in the ordinary course of business in excess of $10,000,000 in the aggregate or (2) assume, guarantee or endorse, or otherwise become responsible for, the obligations of any Person for Indebtedness in excess of $10,000,000 in the aggregate; provided, that the foregoing limitations shall not restrict any Company Group Member from assuming, guaranteeing or endorsing any Indebtedness in connection with any strategic acquisition of assets or Equity Securities;

(vii) fail to maintain in full force and effect insurance policies covering the Company Group Members or the Acquiror Group Members, as applicable, and their respective properties, assets and businesses in a form and amount consistent with the policies in effect as of the date of this Agreement;

(viii) solely with respect to Acquiror Group Members, enter into any Contract that, if in existence as of the date of this Agreement, would be a Sale Transaction Agreement or an Acquiror Material Contract, or amend, modify, waive any material benefit or right under or terminate any Sale Transaction Agreement or Acquiror Material Contract (excluding, for the avoidance of doubt, any expiration or automatic extension or renewal of any Acquiror Material Contract pursuant to its terms);

(ix) make any loans, advances or capital contributions to, or guarantees for the benefit of, or any investments in, any Person, other than the reimbursement of business expenses of employees in the ordinary course of business; provided, that the foregoing limitation shall not restrict any Company Group Member from making any guarantee for the benefit of, or investment in, any Person in connection with any strategic acquisition of assets or Equity Securities;

(x) solely with respect to the Acquiror Group Members or as contemplated in connection with adoption of the Post-Closing Equity Plan, (A) amend, modify, adopt, enter into or terminate any Acquiror Employee Benefit Plan, or any material benefit or compensation plan, policy, program or Contract that would be a an Acquiror Employee Benefit Plan, as applicable, if in effect as of the date of this Agreement, other than for renewals in the ordinary course of business; (B) increase the compensation payable to any individual contractor, manager, director, officer or employee of the Acquiror Group, as applicable; (C) take any action to accelerate any payment, right to payment, or benefit, or the funding of any payment, right to payment or benefit, payable or to become payable to any individual contractor, manager, director, officer or employee of the Acquiror Group, as applicable; (D) grant any additional rights to severance, termination, change in control, retention or similar compensation to any individual contractor, manager, director, officer or employee of the Acquiror Group; (E) hire or engage any employee or independent contractor, or any other individual who is providing or will provide services to any Acquiror Group Member; or (F) grant any compensatory arrangement or award that may settle in Acquiror Capital Stock.

(xi) waive or release any noncompetition, non-solicitation, nondisclosure, noninterference, nondisparagement, or other restrictive covenant obligation of any manager, employee, Contractor, director or officer of any Company Group Member or any Acquiror Group Member, as applicable;

(xii) except as contemplated in the Sale Transaction Agreements or by Section 6.18 of this Agreement, implement or announce any employee layoffs, plant closings, furloughs, reductions in force, reductions in compensation, salaries, wages, hours or benefits, work schedule changes or such similar actions that could implicate the WARN Act;

(xiii) (A) negotiate, modify, extend, or enter into any collective bargaining agreement or (B) recognize or certify any labor union, labor organization, works council, or group of employees as the bargaining representative for any employee of the Company Group or the Acquiror Group, as applicable;

(xiv) make or change any entity classification or other material Tax election or adopt or change any material Tax accounting method in a manner inconsistent with past practice, file any material Tax Return in a manner inconsistent with past practices or amend any material Tax Return or file a claim for material Tax refunds, enter into any agreement with a Governmental Entity with respect to a material amount of Taxes, settle or compromise any claim or assessment by a Governmental Entity in respect of any material amount of Taxes, surrender any right to claim a Tax refund, offset or other reduction in Tax liability or consent to any extension or waiver of the statutory period of limitation applicable to any claim, audit or assessment in respect of a material amount of income Taxes, or enter into any Tax sharing or similar agreement other than in the ordinary course of business;

(xv) (A) cancel or compromise any claim or Indebtedness owed to any Company Group Member or any Acquiror Group Member, as applicable, or (B) solely with respect to the Acquiror Group Members, settle any pending or threatened Proceeding, (1) if such settlement would require payment by any Acquiror Group Member, as applicable, in an amount greater than $100,000, in the aggregate, (2) to the extent such settlement involves a Governmental Entity or alleged criminal wrongdoing, or (3) if such settlement will impose any material, non-monetary obligations on any Company Group Member, any Acquiror Group Member, or any of their respective Affiliates after the Closing;

(xvi) authorize, recommend, propose or announce an intention to adopt, or otherwise effect, a plan of complete or partial liquidation, dissolution, restructuring, recapitalization, reorganization or similar transaction, other than as required to effect the Exchanges, the Redemptions, the Post-Closing Exchanges and the Reverse Split;

(xvii) solely with respect to the Acquiror Group Members, redeem, purchase, repurchase or otherwise acquire, or offer to redeem, purchase, repurchase or acquire, any Equity Securities, other than as required to effect the Redemptions, the Exchanges and the Post-Closing Exchanges;

(xviii) adjust, split, combine, subdivide, recapitalize, reclassify or otherwise effect any change in respect of any Equity Securities, other than as required to effect the Exchanges, the Redemptions, the Post-Closing Exchanges and the Reverse Split;

(xix) solely with respect to the Acquiror Group Members, make any capital expenditures;

(xx) enter into any Contract with any broker, finder, investment banker or other Person under which such Person is or will be entitled to any brokerage fee, finders' fee or other commission in connection with the Transactions;

(xxi) solely with respect to Acquiror Group Members, (A) modify, extend or amend any Acquiror Real Property Lease (excluding, for the avoidance of doubt, any expiration or automatic extension or renewal of any such Acquiror Real Property Lease pursuant to its terms) or (B) enter into any new Acquiror Real Property Lease or other Contract for the use or occupancy of any real property;

(xxii) solely with respect to the Acquiror Group Members, conduct their cash management practices other than in the ordinary course of business (including with respect to the payment of accounts payable and accrued expenses, pricing of goods and services and credit practices and operation of cash management practices generally);

(xxiii) change the Company's or Acquiror's as applicable, methods of accounting in any material respect, other than as may be required by GAAP; or

(xxiv) enter into any Contract to take, or cause to be taken, any of the actions set forth in this Section 6.1(b).

Unless doing so is impracticable due to emergency or urgent circumstances, each Party shall provide advance notice to and reasonably consult with the other Party prior to or promptly following the taking of any action that would be otherwise prohibited or restricted by this Section 6.1(b) but for clause (2) above. Notwithstanding anything in this Section 6.1 or this Agreement to the contrary, nothing set forth in this Agreement shall give Acquiror or the Company, as applicable, directly or indirectly, the right to control or direct the operations of any Company Group Member or Acquiror Group Member, as applicable, prior to the Closing.

Section 6.2 Efforts to Consummate.

(a) Subject to the terms and conditions herein provided, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or advisable to consummate and make effective as promptly as reasonably practicable the Transactions (including the satisfaction, but not waiver, of the closing conditions set forth in Article 7) and, in the case of any Ancillary Document to which such Party will be a party after the date of this Agreement, to execute and deliver such Ancillary Document when required pursuant to this Agreement. Without limiting the generality of the foregoing, each of the Parties shall use commercially reasonable efforts to obtain, file with or deliver to, as applicable, any Consents of any Governmental Entities necessary, proper or advisable to consummate the Transactions, including preparing and submitting any required notices related to any registrations obtained by any Company Group Member from any

Governmental Entity and preparing and submitting any requests to amend or novate any Permits that may be necessary as a consequence of the Transactions. Each Party shall bear its out-of-pocket costs and expenses in connection with the preparation and obtaining of any such Consents. Acquiror shall promptly inform the Company of any communication between any Acquiror Party, on the one hand, and any Governmental Entity, on the other hand, and the Company shall promptly inform Acquiror of any communication between the Company, on the one hand, and any Governmental Entity, on the other hand, in either case, regarding any of the Transactions. Without limiting the foregoing, each Party and their respective Affiliates shall not enter into any agreement with any Governmental Entity not to consummate the Transactions, except with the prior written consent of Acquiror and the Company. Nothing in this Section 6.2 obligates any Party or any of its Affiliates to agree to (1) sell, license or otherwise dispose of, or hold separate and agree to sell, license or otherwise dispose of, any entities, assets or facilities, (2) terminate, amend or assign existing relationships and contractual rights or obligations, (3) amend, assign or terminate existing licenses or other agreements, or (4) enter into new licenses or other agreements. No Party shall agree to any of the foregoing measures with respect to any other Party, except with Acquiror's and the Company's prior written consent.

(b) From and after the date of this Agreement until the earlier of the Closing and the termination of this Agreement in accordance with its terms, the Acquiror Parties, on the one hand, and the Company, on the other hand, shall give counsel for the Company (in the case of any Acquiror Party) or Acquiror (in the case of the Company), a reasonable opportunity to review in advance, and consider in good faith the views of the other in connection with, any proposed written communication to any Governmental Entity relating to the Transactions. Each of the Parties agrees not to participate in any substantive meeting or discussion, either in person or by telephone, with any Governmental Entity in connection with the Transactions unless it consults with, in the case of any Acquiror Party, the Company, or, in the case of the Company, Acquiror in advance.

(c) Notwithstanding anything to the contrary in the Agreement, in the event that this Section 6.2 conflicts with any other covenant or agreement in this Article 6 that is intended to specifically address certain subject matter, then such other covenant or agreement shall govern and control solely to the extent of such conflict.

Section 6.3 Confidentiality and Access to Information.

(a) The Parties hereby acknowledge and agree that the information being provided in connection with this Agreement and the consummation of the Transactions is subject to the terms of the Confidentiality Agreement, the terms of which are incorporated herein by reference. Notwithstanding the foregoing or anything to the contrary in this Agreement, in the event that this Section 6.3(a) or the Confidentiality Agreement conflicts with any other covenant or agreement contained herein that contemplates the disclosure, use or provision of information or otherwise, then such other covenant or agreement contained herein shall govern and control to the extent of such conflict.

(b) From and after the date of this Agreement until the earlier of the Closing Date and the termination of this Agreement in accordance with Article 8, upon reasonable advance written notice, each of Acquiror and the Company shall provide, or cause to be provided, to the other Party and its Representatives during normal business hours reasonable access to the directors, officers, books, records, Company IT Systems and Acquiror IT Systems, as applicable, facilities and properties of each Acquiror Group Member and Company Group Member (in a manner so as to not interfere with the normal business operations of such Acquiror Group Member or Company Group Member and subject to any applicable Pandemic Measures), and shall use its and their respective commercially reasonable efforts to furnish such Representatives with all financial and operating data and other information concerning the affairs of the Acquiror Group Members and the Company Group Members that are in the possession of any Acquiror Group Member or Company Group Member, as applicable, in each case, as the other Party and its Representatives may reasonably request. Notwithstanding the foregoing, each of Acquiror and the Company shall not be required to provide, or cause to be provided to, the other Party or any of its Representatives any information (i) if, and to the extent, doing so would (A) violate any Law to which an Acquiror Group Member or Company Group Member, as applicable, is subject or (B) jeopardize protections afforded to any Acquiror Group Member or Company Group Member, as applicable, under the attorney-client privilege or the attorney work product doctrine (provided that, in case of both of clauses (A) and (B), Acquiror or the Company, as applicable, shall use commercially reasonable efforts to (x) provide such access as can be provided (or otherwise convey such information regarding the applicable matter as can be conveyed) without violating such privilege or Law and (y) provide such information in a manner without violating such privilege or Law), or (ii) if any Company Group Member, on the one hand, and any Acquiror Group Member, on the other hand, are adverse parties in a Proceeding and such information is reasonably pertinent thereto; provided that Acquiror or the Company, as applicable, shall, in the case of clause (i) or (ii), provide prompt written notice of the withholding of access or information on any such basis.

(c) The Parties hereby acknowledge and agree that the Confidentiality Agreement shall be automatically terminated effective as of the Closing without any further action by any Party or any other Person.

Section 6.4 Public Announcements.

(a) Prior to the Effective Time, none of the Parties or any of their respective Representatives shall issue any press releases or make any public announcements with respect to this Agreement or the Transactions without the prior written consent of the Company and Acquiror; provided, however, that each Party may make any such announcement or other communication (i) if such announcement or other communication is required by applicable Law (including pursuant to the Securities Laws or the rules of any national securities exchange), in which case the disclosing Party and its Representatives shall use commercially reasonable efforts to consult with the Company, if the disclosing party is any Acquiror Party, or with Acquiror, if the disclosing party is the Company, to review such announcement or communication and provide the opportunity to comment thereon and the disclosing Party shall consider such comments in good faith, (ii) to the extent such announcements or other communications contain only information previously disclosed in a public statement, press release or other communication previously approved in accordance with this Section 6.4, (iii) to Governmental Entities in connection with any Consents required to be made under this Agreement, the Ancillary Documents or in connection with the Transactions and (iv) regarding the status and terms (including price terms) of this Agreement and the Transactions to their respective directors, officers, employees, direct and indirect current or prospective limited partners and investors or otherwise in the ordinary course of their respective businesses, in each case under this clause (iv), so long as such recipients are obligated to keep such information confidential.

(b) The initial press release concerning this Agreement and the Transactions shall be a joint press release in the form agreed by the Company and Acquiror prior to the execution of this Agreement and such initial press release (the "Signing Press Release") shall be released as promptly as reasonably practicable after the execution of this Agreement. The Company, on the one hand, and Acquiror, on the other hand, shall mutually agree upon (such agreement not to be unreasonably withheld, conditioned or delayed by either the Company or Acquiror, as applicable) a press release announcing the consummation of the Transactions (the "Closing Press Release") prior to the Closing, and, on the Closing Date, the Parties shall cause the Closing Press Release to be released. In connection with the preparation of each of the Signing Press Release and the Closing Press Release, each Party shall, upon written request by any other Party, furnish such other Party with all information concerning itself, its directors, officers and equityholders, and such other matters as may be reasonably necessary for such press release or filing.

Section 6.5 Tax Matters.

(a) The Parties intend that for U.S. federal (and, as applicable, state and local) income Tax purposes, the Merger will be treated as a "reorganization" within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code and as an exchange to which Section 351 of the Code applies (the "Intended Tax Treatment"), and hereby

adopt this Agreement as a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3 and Section 354(a)(1) of the Code. Each of the Parties shall use commercially reasonable efforts not to take an action that could reasonably be expected to cause the Merger to fail to qualify for the Intended Tax Treatment. The Parties will comply with the filing requirements of Treasury Regulations Sections 1.351-3 or 368-3, as applicable.

(b) Except as required by a "determination" within the meaning of Section 1313 of the Code, the Parties shall, and shall cause each of their respective applicable Affiliates to: (i) prepare and file all Tax Returns consistent with the Intended Tax Treatment; (ii) take no position in any communication with any Governmental Entity or any other action inconsistent with the Intended Tax Treatment; (iii) promptly inform each other of any challenge by any Governmental Entity to any portion of the Intended Tax Treatment; (iv) consult with and keep one another informed with respect to the status of, and any discussion, proposal or submission with respect to, any such challenge to any portion of the Intended Tax Treatment; and (v) use their respective commercially reasonable efforts to defend the Intended Tax Treatment in any audit, examination, claim or other similar proceeding.

(c) All Transfer Taxes incurred in connection with this Agreement shall be borne by the Company and paid when due. The Company shall timely file, or cause to be timely filed, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and, if required by applicable Law, the Acquiror will join in the execution of any such Tax Return or documentation.

(d) Acquiror and the Holders shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing or amendment of Tax Returns and any audit or other proceeding with respect to Taxes or Tax Returns of Acquiror, the Surviving Company, the Company or its Subsidiaries. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such Tax Return, audit or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Any out-of-pocket expenses incurred in connection with the operation of this Section 6.5(d) shall be borne by the requesting Party.

(e) Notwithstanding any provision in this Agreement to the contrary, Acquiror makes no representations or warranties to the Company Group, the Company Stockholders or any other security holders of the Company with respect to whether the Merger qualifies for the Intended Tax Treatment.

Section 6.6 Non-Solicitation; Recommendation of the Merger.

(a) Acquiror shall not, and shall not permit or authorize any of its Subsidiaries or any Representative of Acquiror or any of its Subsidiaries, directly or indirectly, to (i) solicit, initiate, endorse, knowingly encourage or facilitate any inquiry, proposal or offer with respect to, or the making or completion of, any Acquisition Proposal, or any inquiry, proposal or offer that is reasonably likely to lead to any Acquisition Proposal, (ii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any information or data with respect to, or otherwise cooperate in any way with, any Acquisition Proposal or (iii) resolve, agree or propose to do any of the foregoing; provided, that Acquiror may (x) advise any Person of the restrictions of this Agreement; and (y) advise any Person making an Acquisition Proposal that the Acquiror Board has determined that such Acquisition Proposal does not constitute a Superior Proposal, in each case, if, in so doing, no other information that is prohibited from being communicated under this Agreement is communicated to such Person. Acquiror shall, and shall cause each of its Subsidiaries and the Representatives of Acquiror and its Subsidiaries to, (A) immediately cease and cause to be terminated all existing discussions and negotiations with any Person conducted heretofore with respect to any Acquisition Proposal or potential Acquisition Proposal and immediately terminate all physical and electronic data room access previously granted to any such Person, (B) request the prompt return or destruction of all confidential information previously furnished with respect to any Acquisition Proposal or potential Acquisition Proposal, and (C) not terminate, waive, amend, release or modify any provision of any confidentiality or standstill agreement to which it or any of its Affiliates or Representatives is a party with respect to any Acquisition Proposal or potential Acquisition Proposal, and shall enforce the provisions of any such agreement, which shall include seeking any injunctive relief available to enforce such agreement (provided, that Acquiror shall be permitted to grant waivers of, and not enforce, any standstill agreement, but solely to the extent that the Acquiror Board has determined in good faith, after consultation with its outside counsel, that failure to take such action (1) would prohibit the counterparty from making an unsolicited Acquisition Proposal to the Acquiror Board in compliance with this Section 6.6 and (2) would constitute a breach of its fiduciary duties to the Acquiror Stockholders under applicable Law). Notwithstanding the foregoing, if at any time following the date of this Agreement and prior to obtaining the Acquiror Stockholder Approval, (w) Acquiror receives a written Acquisition Proposal that the Acquiror Board believes in good faith to be bona fide, (x) such Acquisition Proposal was unsolicited and did not otherwise result from a breach of this Section 6.6 (other than *de minimis* breaches), (3) the Acquiror Board determines in good faith (after consultation with outside counsel and its financial advisor) that such Acquisition Proposal constitutes or is reasonably likely to constitute or lead to a Superior Proposal, and (4) the Acquiror Board determines in good faith (after consultation with outside counsel) that the failure to take the actions referred to in clause (I) and/or (II) below would constitute a breach of its fiduciary duties to the Acquiror Stockholders under applicable Law, then Acquiror may (I) furnish information with respect to Acquiror and its Subsidiaries to the Person making such Acquisition Proposal pursuant to a customary confidentiality agreement containing terms substantially similar to, and no less favorable to Acquiror than, those set forth in the Confidentiality Agreement (including any standstill agreement contained therein) (an "Acceptable Confidentiality Agreement"); provided, that (x) Acquiror shall provide the Company a non-redacted copy of each confidentiality agreement Acquiror has executed in accordance with thisSection 6.6 and (y) any non-public information provided to any such Person shall have been previously provided to the Company or shall be provided to the Company prior to or concurrently with the time it is provided to such Person, and (II) participate in discussions or negotiations with the Person making such Acquisition Proposal regarding such Acquisition Proposal. Acquiror shall not provide (and shall not permit any of its Subsidiaries or any of their respective Representatives to provide) any commercially or competitively sensitive non-public information in connection with the actions permitted by this Section 6.6, except in accordance with "clean room" or other similar procedures designed to limit any adverse effect of the sharing of such information on Acquiror, which procedures shall be consistent in all material respects with Acquiror's practices in dealing with the disclosures of such information to the Company or its Representatives.

(b) Neither the Acquiror Board nor any committee thereof, shall:

(i) (A) withdraw (or modify or qualify in any manner adverse to the Company) the recommendation or declaration of advisability by the Acquiror Board or any such committee of this Agreement, the Merger or any of the other Transactions, (B) recommend or otherwise declare advisable the approval by the Acquiror Stockholders or the Holders of any Acquisition Proposal, or (C) resolve, agree or propose to take any such actions (each such action set forth in this Section 6.6(b)(i) being referred to herein as an "Adverse Recommendation Change"); or

(ii) cause or permit the any Acquiror Group Member to enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other Contract, except for an Acceptable Confidentiality Agreement (each, an "Alternative Acquisition Agreement"), in each case constituting or related to, or which is intended to or is reasonably likely to lead to, any Acquisition Proposal, or resolve, agree or propose to take any such actions.

Notwithstanding the foregoing, at any time prior to obtaining the Acquiror Stockholder Approval, the Acquiror Board may, if the Acquiror Board determines in good faith (after consultation with outside counsel) that the failure to do so would result in a breach of its fiduciary duties to the Acquiror Stockholders under applicable Law, taking into account all adjustments to the terms of this Agreement that may be offered by the Company pursuant to this Section 6.6, (x) make an Adverse Recommendation Change in response to a Superior Proposal, or (y) solely in response to a Superior Proposal received after the date hereof that was unsolicited and did not otherwise result from a breach of this Section

6.6 (other than *de minimis* breaches), cause Acquiror to terminate this Agreement in accordance with Section 8.1(g) and concurrently enter into a binding Alternative Acquisition Agreement with respect to such Superior Proposal; provided, however, that Acquiror may not make an Adverse Recommendation Change in response to a Superior Proposal or terminate this Agreement pursuant to Section 8.1(g) unless:

(A) Acquiror notifies the Company in writing at least five Business Days before taking that action of its intention to do so, and specifies the reasons therefor, including the terms and conditions of, and the identity of the Person making, such Superior Proposal, and contemporaneously furnishes a copy (if any) of the proposed Alternative Acquisition Agreement and any other relevant transaction documents (it being understood and agreed that any material amendment to the financial terms or any other term of such Superior Proposal shall require a new written notice by Acquiror and a new five Business Day period); and

(B) if the Company makes a proposal during such five Business Day period to adjust the terms and conditions of this Agreement, the Acquiror Board, after taking into consideration the adjusted terms and conditions of this Agreement as proposed by the Company, continues to determine in good faith (after consultation with outside counsel and its financial advisor) that such Superior Proposal continues to be a Superior Proposal and that the failure to make an Adverse Recommendation Change or terminate this Agreement, as applicable, would result in a breach of its fiduciary duties to the Acquiror Stockholders under applicable Law;

During the five Business Day period prior to its effecting an Adverse Recommendation Change or terminating this Agreement as referred to above, Acquiror shall, and shall cause its financial and legal advisors to, negotiate with the Company in good faith (to the extent the Company seeks to negotiate) regarding any revisions to the terms of the transactions contemplated by this Agreement proposed by the Company. If the Acquiror Board determines that an Acquisition Proposal would cease to be a Superior Proposal following the revisions to this Agreement proposed by the Company, Acquiror shall promptly so advise the Company and Acquiror and the Company shall amend this Agreement to reflect such offer made by the Company, and shall take and cause to be taken all such actions as are necessary to give effect to the foregoing. Notwithstanding anything to the contrary contained herein, neither Acquiror nor any of its Subsidiaries shall enter into any Alternative Acquisition Agreement unless this Agreement has been terminated in accordance with its terms (including the payment of the Termination Fee pursuant to Section 8.3, if applicable).

(c) In addition to the obligations of Acquiror set forth in Section 6.6(a) and Section 6.6(b), Acquiror promptly (and in any event within 24 hours of receipt) shall advise the Company in writing in the event Acquiror or any of its Subsidiaries or Representatives receives (i) any indication by any Person that it is considering making an Acquisition Proposal, (ii) any inquiry or request for information, discussion or negotiation that is reasonably likely to lead to or that contemplates an Acquisition Proposal, or (iii) any proposal or offer that is or is reasonably likely to lead to an Acquisition Proposal, in each case together with a description of the material terms and conditions of and facts surrounding any such indication, inquiry, request, proposal or offer, the identity of the Person making any such indication, inquiry, request, proposal or offer, and a copy of any written proposal, offer or draft agreement provided by such Person. Acquiror shall keep the Company informed (orally and in writing) in all material respects on a timely basis of the status and details (including, within 24 hours after the occurrence of any amendment, modification, development, discussion or negotiation) of any such Acquisition Proposal, request, inquiry, proposal or offer, including furnishing copies of any written inquiries, correspondence and draft documentation, and written summaries of any material oral inquiries or discussions. Without limiting any of the foregoing, Acquiror shall promptly (and in any event within 24 hours) notify the Company orally and in writing if it determines to begin providing information or to engage in discussions or negotiations concerning an Acquisition Proposal pursuant to Section 6.6(a) or Section 6.6(b) and shall in no event begin providing such information or engaging in such discussions or negotiations prior to providing such notice. Acquiror shall provide the Company with at least 24 hours prior notice (or such shorter notice as may be provided to the Acquiror Board) of a meeting of the Acquiror Board at which the Acquiror Board is reasonably expected to consider an Acquisition Proposal.

(d) Acquiror agrees that any violation of the restrictions set forth in this Section 6.6 by any Representative of Acquiror or any of its Subsidiaries, whether or not such Person is purporting to act on behalf of Acquiror or any of its Subsidiaries or otherwise, shall be deemed to be a material breach of this Agreement by Acquiror.

(e) Acquiror shall not, and shall cause its Subsidiaries not to, enter into any confidentiality agreement with any Person subsequent to the date of this Agreement that would restrict the Acquiror's ability to comply with any of the terms of this Section 6.6, and represents that neither it nor any of its Subsidiaries is a party to any such agreement.

(f) Acquiror shall not take any action to exempt any Person (other than the Company and its Affiliates) from the restrictions on "business combinations" contained in Section 203 of the DGCL (or any similar provision of any other Takeover Law) or otherwise cause such restrictions not to apply, or agree to do any of the foregoing, in each case unless such actions are taken substantially concurrently with a termination of this Agreement pursuant to Section 8.1(g).

(g) Nothing contained in Section 6.6(a) shall prohibit the Company from taking and disclosing a position contemplated by Rule 14e-2(a), Rule 14d-9 or Item 1012(a) of Regulation M-A promulgated under the Exchange Act; provided, however, that any such disclosure (other than a "stop, look and listen" communication or similar communication of the type contemplated by Section 14d-9(f) under the Exchange Act) shall be deemed to be an Adverse Recommendation Change (including for purposes of Section 8.1(f)) unless the Acquiror Board expressly reaffirms its recommendation to the Acquiror Stockholders in favor of the approval of this Agreement and the Transactions in such disclosure and expressly rejects any applicable Acquisition Proposal.

(h) If Acquiror provides the Company with notice of a Superior Proposal as contemplated in Section 6.6(b) after a date that is less than seven (7) Business Days before the Acquiror Stockholder Meeting, Acquiror shall be entitled to, and the Company shall be entitled to require Acquiror to, adjourn or postpone the Acquiror Stockholder Meeting to a date that is not more than 15 Business Days after the scheduled date of the Acquiror Stockholder Meeting but in any event the Acquiror Stockholder Meeting shall not be postponed to a date which would prevent the Effective Time from occurring on or prior to the Termination Date.

Section 6.7 Company Financial Statements. As promptly as reasonably practicable following the date of this Agreement, the Company shall provide to Acquiror the unaudited consolidated balance sheet of the Company Group, and the related unaudited consolidated statements of income, changes in members' equity (deficit) and cash flows, prepared in accordance with (i) GAAP applied on a consistent basis throughout the covered periods and (ii) Regulation S-X, that have been reviewed by the Company's independent auditor in accordance with PCAOB Auditing Standard 4105, for each fiscal quarter of the Company Group between January 1, 2022 and September 30, 2022 (and the comparable period in the prior year). All costs incurred in connection with preparing and obtaining such financial statements shall be borne by the Company.

Section 6.8 Preparation of Proxy Statement and Form S-4; Acquiror Stockholders Meeting.

(a) As promptly as practicable after the date of this Agreement (and in any event within twenty-eight (28) calendar days after the date hereof), Acquiror shall (i) prepare (with the Company's reasonable cooperation) and file with the SEC (A) a proxy statement (as amended or supplemented from time to time, the "Proxy Statement") to be sent to the Acquiror Stockholders relating to the special meeting of the Acquiror Stockholders (the "Company Stockholders Meeting") to be held to consider the Acquiror Stockholder Approval Matters and (B) a registration statement on Form S-4 (as amended or supplemented from time to time, the "Form S-4"), in which the Proxy Statement will be included as a prospectus, in connection with the registration under the Securities Act of the Acquiror Common Stock comprising the Merger Consideration, and (ii) in consultation with the Company, set a preliminary record date for the Acquiror Stockholders Meeting and commence a broker search pursuant to Section 14a-13 of the Exchange Act in connection therewith. Acquiror shall use its reasonable best efforts (1) to have the Form S-4 declared effective under the Securities Act as promptly as practicable after

such filing and to keep the Form S-4 effective as long as is necessary to consummate the Merger and the other Transactions and (2) to cause the Proxy Statement to be mailed to the Acquiror Stockholders as promptly as practicable after the Form S-4 is declared effective under the Securities Act. Acquiror shall also take any action (other than qualifying to do business in any jurisdiction in which it is not now so qualified or filing a general consent to service of process) required to be taken under any applicable state securities or "blue sky" laws in connection with the issuance of shares of Acquiror Common Stock in the Merger and the Company shall furnish all information concerning the Company and the holders of Company Capital Stock as may be reasonably requested in connection with any such action. No filing of, or amendment or supplement to, the Form S-4 or the Proxy Statement will be made by Acquiror without providing the Company a reasonable opportunity to review and comment thereon and without the Company's prior approval (which shall not be unreasonably withheld). Acquiror will advise the Company promptly after it receives oral or written notice thereof, of the time when the Form S-4 has become effective or any amendment or supplement thereto has been filed, the issuance of any stop order, the suspension of the qualification of the Acquiror Common Stock issuable in connection with the Merger for offering or sale in any jurisdiction or any oral or written request by the SEC for amendment of the Proxy Statement or the Form S-4 or comments thereon and responses thereto or requests by the SEC for additional information, and will promptly provide the Company with copies of any written communication from the SEC or any state securities commission and a reasonable opportunity to participate in the responses thereto. Acquiror shall (i) provide the Company with reasonable prior notice of any scheduled telephone calls between Acquiror or its Representatives and the SEC, and (ii) use its reasonable best efforts to allow the Company or its Representatives to participate in all such telephone calls.

(b) Acquiror shall cause the Proxy Statement and the Form S-4 to comply as to form in all material respects with the provisions of the Federal Securities Laws, the DGCL and any other applicable Law. Notwithstanding the foregoing, neither Acquiror nor Merger Sub shall have any such obligation with respect to statements included or incorporated by reference in the Proxy Statement or the Form S-4 based on information supplied in writing by or on behalf of the Company specifically for inclusion therein. If at any time prior to the Effective Time any information relating to the Company or Acquiror, or any of their respective Affiliates, officers or directors, should be discovered by the Company or Acquiror that should be set forth in an amendment or supplement to any of the Form S-4 or the Proxy Statement, so that any of such documents would not contain any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall promptly be filed with the SEC and, to the extent required under applicable Law, disseminated to Acquiror Stockholders; provided that the delivery of such notice and the filing of any such amendment or supplement shall not affect or be deemed to modify any representation or warranty made by any party hereunder or otherwise affect the remedies available hereunder to any party.

(c) As promptly as practicable (and in any event within ten (10) calendar days) after the Form S-4 is declared effective under the Securities Act, Acquiror shall duly call, give notice of the Acquiror Stockholders Meeting solely for the purpose of obtaining the Acquiror Stockholder Approval and, if applicable, the advisory vote required by Rule 14a-21(c) under the Exchange Act in connection therewith. The Acquiror Stockholder Meeting shall be held as promptly after the date of such notice as permitted under applicable Law, the listing rules of the Nasdaq and Acquiror's Governing Documents. Acquiror may postpone or adjourn the Acquiror Stockholders Meeting solely: (i) with the prior written consent of the Company; (ii) (A) due to the absence of a quorum or (B) if Acquiror has not received proxies representing a sufficient number of shares of Acquiror Capital Stock to constitute the Acquiror Stockholder Approval, whether or not a quorum is present, to solicit additional proxies; (iii) to allow reasonable additional time for the filing and mailing of any supplemental or amended disclosure which the Acquiror Board has determined in good faith after consultation with outside legal counsel is necessary under applicable Law and for such supplemental or amended disclosure to be disseminated and reviewed by the Acquiror Stockholders prior to the Acquiror Stockholders Meeting or (iv) pursuant to Section 6.6(h); provided, that Acquiror may not postpone or adjourn the Acquiror Stockholders Meeting more than a total of two (2) times pursuant to clause (ii)(A) and/or clause (ii)(B) of this Section 6.8. Notwithstanding the foregoing, Acquiror shall, at the request of the Company, to the extent permitted by applicable Law, adjourn the Acquiror Stockholders Meeting to a date specified by the Company for the absence of a quorum or if Acquiror has not received proxies representing a sufficient number of shares of Acquiror Capital Stock to constitute the Acquiror Stockholder Approval; provided, that Acquiror shall not be required to adjourn the Acquiror Stockholders Meeting more than one (1) time pursuant to this sentence, and no such adjournment pursuant to this sentence shall be required to be for a period exceeding 10 Business Days. Except in the case of an Adverse Recommendation Change specifically permitted by Section 6.6(b), Acquiror, through the Acquiror Board, shall (I) recommend to Acquiror Stockholders that they adopt this Agreement and the Ancillary Documents and approve of the Acquiror Stockholder Approval Matters, (II) include the Acquiror Board Recommendation in the Proxy Statement and (III) publicly reaffirm the Acquiror Board Recommendation within twenty-four (24) hours after a request to do so by the Company. Without limiting the generality of the foregoing, Acquiror agrees that (x) except in the event of an Adverse Recommendation Change specifically permitted by Section 6.6(b), Acquiror shall use commercially reasonable efforts to solicit proxies to obtain the Acquiror Stockholder Approval and (y) its obligations pursuant to this Section 6.8(c) shall not be affected by the commencement, public proposal, public disclosure or communication to Acquiror or any other Person of any Acquisition Proposal or the occurrence of any Adverse Recommendation Change.

Section 6.9 Takeover Laws. Acquiror and the Acquiror Board shall (a) take no action to cause any Takeover Law to become applicable to this Agreement, the Merger or any of the other Transactions and (b) if any Takeover Law is or becomes applicable to this Agreement, the Merger or any of the other Transactions take all action necessary to ensure that the Merger and the other Transactions may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such Takeover Law with respect to this Agreement, the Merger and the other Transactions.

Section 6.10 Nasdaq Listing.

(a) From the date of this Agreement through the Effective Time, Acquiror shall use commercially reasonable efforts to ensure Acquiror remains listed as a public company on Nasdaq and to obtain the Nasdaq Approval and the Company will use commercially reasonable efforts to support Acquiror in obtaining the Nasdaq Approval.

(b) Acquiror shall promptly prepare and use commercially reasonable efforts to submit the Nasdaq Listing Application to Nasdaq as promptly as reasonably practicable after the date of this Agreement and the Company will use commercially reasonable efforts to support Acquiror in timely preparing and submitting the Nasdaq Listing Application.

(c) Acquiror shall cause the Nasdaq Listing Application to comply in all material respects with the requirements of the Nasdaq, and any other applicable Law. Acquiror shall use its commercially reasonable efforts to resolve all Nasdaq comments with respect to the Nasdaq Listing Application as promptly as reasonably practicable after receipt thereof and to have the Nasdaq Listing Application cleared by the staff of Nasdaq, and the Nasdaq Approval obtained, as promptly as reasonably practicable after such submission.

(d) No amendment or supplement to the Nasdaq Listing Application shall be made by Acquiror without the reasonable advance notice to the Company. Acquiror shall promptly provide notice to the Company of any correspondence or communications with or comments from Nasdaq and shall provide the Company with copies of all such written comments and written correspondence. Acquiror shall consider in good faith any comments of the Company prior to submitting any response letters or other correspondence to Nasdaq. Acquiror shall (i) provide the Company with reasonable prior notice of any scheduled telephone calls between Acquiror or its Representatives and Nasdaq, and (ii) use its reasonable best efforts to allow the Company or its Representatives to participate in all such telephone calls.

Section 6.11 Acquiror Indemnification and Insurance.

(a) Each Party agrees that (i) all rights to advancement, indemnification, limitations on liability or exculpation now existing in favor of the directors and officers of each Acquiror Party, as provided in the applicable Acquiror Party's Governing Documents in effect as of immediately prior to the Effective Time, in either case, solely with respect to any acts, errors or omissions occurring on or prior to the Effective Time, shall survive the Transactions and shall continue in full force and effect from and after the Effective Time for a period of six (6) years and (ii) Acquiror will perform and discharge, or cause to be performed and discharged, all obligations to provide such advancement, indemnity, limitations on liability and exculpation during such six (6)-year period. During such six (6)-year period, Acquiror shall advance, or cause to be advanced, expenses in connection with such indemnification as provided in the applicable Acquiror Party's Governing Documents or other applicable agreements in effect as of the date hereof. The advancement, indemnification and liability limitation or exculpation provisions of the Acquiror Parties' Governing Documents or in other applicable agreements in effect as of immediately prior to the Effective Time shall not, during such six (6)-year period, be amended, repealed or otherwise modified after the Effective Time in any manner that would materially and adversely affect the rights thereunder of individuals who, as of immediately prior to the Effective Time or at any time prior to such time, were directors or officers of any Acquiror Party (the "Acquiror D&O Persons") to receive advancement, be so indemnified, have their liability limited or be exculpated with respect to any act, error or omission occurring on or prior to the Effective Time by reason of the fact that such Acquiror D&O Person was a director or officer of any Acquiror Party immediately prior to the Effective Time unless such amendment, repeal or other modification is required by applicable Law.

(b) Acquiror shall not have any obligation under this Section 6.11 to any Acquiror D&O Person when and if a court of competent jurisdiction shall ultimately determine (and such determination shall have become final and non-appealable) that the indemnification of such Acquiror D&O Person in the manner contemplated hereby is prohibited by applicable Law.

(c) If, following the Closing, Acquiror (i) shall merge or consolidate with or merge into any other corporation or entity and shall not be the surviving or continuing corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets as an entity in one or a series of related transactions to any Person, then in each such case, proper provisions shall be made so that the successors or assigns of Acquiror shall assume all of the obligations set forth in this Section 6.11.

(d) Acquiror and its Subsidiaries shall maintain director and officers insurance policies, including purchasing any "tail" policies as may be required, with coverage at least as favorable to the D&O Persons as in effect at the Effective Time without any reduction in scope or coverage for six (6) years from the Effective Time.

(e) The Acquiror D&O Persons entitled to the advancement, indemnification, liability limitation, and exculpation set forth in this Section 6.11 are intended to be third party beneficiaries of this Section 6.11. This Section 6.11 shall survive the consummation of the Transactions and shall be binding on all successors and assigns of Acquiror.

Section 6.12 Company Indemnification.

(a) Each Party agrees that (i) all rights to advancement, indemnification, limitations on liability, or exculpation now existing in favor of the directors and officers of any Company Group Member, as provided in the Company Group Member's Governing Documents in effect as of immediately prior to the Effective Time, in either case, solely with respect to any acts, errors or omissions occurring on or prior to the Effective Time, shall survive the Transactions and shall continue in full force and effect from and after the Effective Time for a period of six (6) years and (ii) Acquiror will perform and discharge, or cause to be performed and discharged, all obligations to provide such advancement, indemnity, limitations on liability and exculpation during such six (6)-year period. During such six (6)-year period, Acquiror shall advance, or cause to be advanced, expenses in connection with such indemnification as provided in the applicable Company Group Member's Governing Documents or other applicable agreements in effect as of the date hereof. The advancement, indemnification and liability limitation or exculpation provisions of any Company Group Member's Governing Documents or in other applicable agreements in effect as of immediately prior to the Effective Time shall not, during such six (6)-year period, be amended, repealed or otherwise modified after the Effective Time in any manner that would materially and adversely affect the rights thereunder of individuals who, as of immediately prior to the Effective Time or at any time prior to such time, were directors or officers of the applicable Company Group Member (the "Company D&O Persons") to receive advancement, be so indemnified, have their liability limited or be exculpated with respect to any act, error or omission occurring on or prior to the Effective Time by reason of the fact that such Company D&O Person was a director or officer of the applicable Company Group Member prior to the Effective Time, unless such amendment, repeal or other modification is required by applicable Law.

(b) None of Acquiror or the Company shall have any obligation under this Section 6.12 to any Company D&O Person when and if a court of competent jurisdiction shall ultimately determine (and such determination shall have become final and non-appealable) that the indemnification of such Company D&O Person in the manner contemplated hereby is prohibited by applicable Law.

(c) If, following the Closing, Acquiror (i) shall merge or consolidate with or merge into any other corporation or entity and shall not be the surviving or continuing corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets as an entity in one or a series of related transactions to any Person, then in each such case, proper provisions shall be made so that the successors or assigns of Acquiror shall assume all of the obligations set forth in this Section 6.12.

(d) The Company D&O Persons entitled to the advancement, indemnification, liability limitation and exculpation set forth in this Section 6.12 are intended to be third party beneficiaries of this Section 6.12. This Section 6.12 shall survive the consummation of the Transactions and shall be binding on all successors and assigns of Acquiror.

Section 6.13 Post-Closing Directors and Officers.

(a) Subject to applicable listing rules of Nasdaq, applicable Law and the second sentence of Section 6.13(b), not less than five (5) Business Days prior to the Closing Date:

(i) the Company shall designate in writing to Acquiror seven (7) Persons that will serve on the Acquiror Board as of immediately following Closing, which shall include the Persons set forth on Section 6.13(a) of the Company Disclosure Schedules; and

(ii) Acquiror shall deliver to the Company executed letters of resignation from all members of the Acquiror Board, and all officers of Acquiror, effective immediately prior to the Effective Time, other than any member of the Acquiror Board designated for continued service pursuant to this Section 6.13(a)(ii).

(b) For the avoidance of doubt, as of immediately following Closing, the Acquiror Board shall consist of seven (7) directors. Notwithstanding the designation rights of the Parties in Section 6.13(a), not less than a majority of the directors on the Acquiror Board as of immediately following the Closing shall qualify as independent directors in accordance with the Nasdaq listing rules. In the event that any designee designated pursuant to Section 6.13(a) is unable or unwilling to serve, for any reason, as a

director on the Acquiror Board at the Effective Time, the Company shall have the right to designate another individual to become a designee in place of such unavailable designee. The designees appointed pursuant to this Section 6.13 shall be assigned to the committees of the Acquiror Board as determined by the Company not less than five (5) Business Days prior to the Closing.

(c) The Persons identified on Section 6.13(c) of the Company Disclosure Schedules shall be the officers of Acquiror immediately after the Effective Time, with each such individual holding the title set forth opposite his or her name. In the event that any Person identified on Section 6.13(c) of the Company Disclosure Schedules is unwilling or unable (whether due to death, disability or otherwise) to serve as an officer, then the Company may, subject to applicable listing rules of Nasdaq and applicable Law, replace such individual with another individual to serve as such officer by amending Section 6.13(c) of the Company Disclosure Schedules to include such replacement individual as such Officer.

(d) Each Party shall take all such action as may be necessary or appropriate to give effect to the designations set forth in Section 6.13(a), Section 6.13(b) and Section 6.13(c) as of immediately following Closing.

(e) At the Closing, Acquiror shall enter into customary indemnification agreements, in a form reasonably satisfactory to each of the Company and Acquiror, with the post-Closing directors and officers of Acquiror as determined pursuant to this Section 6.13 other than any such directors or officers who were already party to an indemnification agreement with Acquiror immediately prior to the Closing.

Section 6.14 Section 16 of the Exchange Act. Prior to the Closing, the Acquiror Board or an appropriate committee thereof, shall adopt a resolution consistent with the interpretive guidance of the SEC relating to Rule 16b-3 under the Exchange Act, such that the acquisition of Acquiror Common Stock pursuant to this Agreement by any officer or director of the Company who is expected to become a "covered person" of Acquiror for purposes of Section 16(b) of the Exchange Act ("Section 16(b)") shall be exempt acquisitions for purposes of Section 16(b).

Section 6.15 Notification of Certain Matters. Each Party shall provide the other Parties with prompt written notice upon becoming aware of any event, fact or circumstance that would reasonably be expected to cause such Party's or any other Party's conditions set forth in Article 7 not to be satisfied, or the satisfaction of such conditions being materially delayed. No such notice shall constitute an acknowledgment or admission by the Party providing the notice regarding whether or not any of the conditions to the Closing have been satisfied or in determining whether or not any of the representations, warranties or covenants contained in this Agreement have been breached. No notice pursuant to this Section 6.15 shall affect any representation, warranty, covenant, right or remedy of any Party or any condition to the obligations of any Party.

Section 6.16 Transaction Litigation. From and after the date of this Agreement until the earlier of the Closing and the termination of this Agreement in accordance with Article 8, Acquiror, on the one hand, and the Company, on the other hand, shall each notify the other promptly after learning of any demand (or threat thereof) or other Proceeding brought on behalf of an Acquiror Stockholder or Company Stockholder, respectively, whether or not before any Governmental Entity (including derivative claims), relating to this Agreement or the Transactions (collectively, "Transaction Litigation") commenced or, to the knowledge of Acquiror or to the knowledge of the Company, as applicable, threatened in writing against (a) in the case of Acquiror, Acquiror, any of Acquiror's Affiliates or any of their respective officers, directors, managers, employees, or stockholders or members (in their capacity as such) or (b) in the case of the Company, any Company Group Member, any of the Company Group's controlled Affiliates or any of their respective officers, directors, managers, employees or members (in their capacity as such). Acquiror and the Company shall each (i) keep the other reasonably informed regarding any Transaction Litigation, (ii) give the other the opportunity to, at its own cost and expense, participate in the defense, settlement and compromise of any such Transaction Litigation and reasonably cooperate with the other in connection with the defense, settlement and compromise of any such Transaction Litigation, (iii) consider in good faith the other's advice with respect to any such Transaction Litigation, and (iv) reasonably cooperate with each other with respect to any Transaction Litigation; provided, however, that in no event shall (x) any Company Group Member, any of the Company Group's Affiliates or any of their respective Representatives settle or compromise any Transaction Litigation without the prior written consent of Acquiror (such consent not to be unreasonably withheld, conditioned or delayed) or (y) Acquiror, any of Acquiror's Affiliates or any of their respective Representatives settle or compromise any Transaction Litigation without the Company's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

Section 6.17 Pre-Closing Financings; Expense Financings.

(a) In the event that, prior to the Closing or termination of this Agreement in accordance with Article 8, Acquiror consummates a transaction or series of transactions in which Acquiror issues and sells Equity Securities for capital raising purposes (each, a "Pre-Closing Financing"), then no later than two Business Days following the consummation of such Pre-Closing Financing, Acquiror shall pay to the Company an amount in cash equal to the proceeds received by Acquiror from such Pre-Closing Financing (less transaction costs incurred by Acquiror in connection therewith) in exchange for an unsecured promissory note in a form that is reasonably acceptable to Acquiror and the Company (a "Bridge Note"). Each Bridge Note shall provide that (a) in the event that the Closing occurs or this Agreement is terminated pursuant to Article 8 and Acquiror is obligated to pay the Termination Fee or Reimbursed Expenses to the Company, the Bridge Note shall be deemed cancelled, paid and satisfied in full in accordance with its terms and (b) in the event that this Agreement is terminated pursuant to Article 8 and Acquiror is not obligated to pay the Termination Fee or Reimbursed Expenses to the Company, the Company shall be obligated to repay the amounts outstanding under the Bridge Note to Acquiror on the third anniversary of the date that this Agreement is terminated. Amounts outstanding under each Bridge Note shall bear interest at the prime lending rate as published in The Wall Street Journal in effect on the date such Bridge Note is issued by the Company. All Equity Securities issued by Acquiror in any Pre-Closing Financing shall be taken into account in determining the Acquiror Fully Diluted Share Number.

(b) Notwithstanding Section 6.17(a), Acquiror shall be permitted to issue and sell up to $5,000,000 of Equity Securities, in a transaction or series of transactions, for the purpose of raising capital (i) to pay legal and other advisory fees incurred by the Acquiror Group Members in connection with the Transactions, (ii) to pay down the principal amount of the Acquiror Convertible Notes, and (iii) to pay operating expenses incurred by the Acquiror Group Members in the ordinary course of business (each, an "Expense Financing"). Prior to consummating any Expense Financing, Acquiror shall deliver to the Company a statement setting forth in reasonable detail the proposed use of proceeds therefrom. In the event that the Company provides prior written approval of such statement, then the Expense Financing shall not constitute a Pre-Closing Financing and shall not be subject to the terms of Section 6.17(a). All Equity Securities issued by Acquiror in any Expense Financing shall be taken into account in determining the Acquiror Fully Diluted Share Number.

Section 6.18 Employee Matters.

(a) If requested by the Company at least five (5) Business Days prior to the Closing Date, Acquiror shall terminate each Acquiror Employee Benefit Plan (and all Contracts related thereto) indicated by the Company in such request, effective not later than the day immediately preceding the Closing Date (or such earlier date as may be indicated by the Company in such request).

(b) If requested by the Company at least ten (10) Business Days prior to the Closing Date, Acquiror shall terminate the employment or service, as applicable, of each service provider of the Acquiror Group indicated by the Company in such request, effective not later than the Closing Date (or such earlier date as may be indicated by the Company in such request).

(c) As soon as administratively practicable on or following the applicable date of termination of employment or service, as applicable, with the Acquiror Group, and in accordance with applicable Law, the Acquiror or its respective Subsidiary shall pay to each such terminated service provider any and all compensation and benefits (including mid-year incentives, if applicable) that have been earned and accrued through such termination date.

(d) Prior to the Closing, Acquiror shall adopt the Post-Closing Equity Plan and prepare and file with the SEC a Form S-8 (or any successor form, or if Form S-8 is not available, such other appropriate forms) registering the number of shares of Acquiror Common Stock as reserved thereunder. Such Form S-8 or successor or other appropriate form shall be effective no later than the Closing.

ARTICLE 7
CONDITIONS TO CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT

Section 7.1 Conditions to the Obligations of the Parties. The obligations of the Parties to consummate the Transactions are subject to the satisfaction or, if permitted by applicable Law, waiver by the Party for whose benefit such condition exists of the following conditions:

(a) no Order or Law issued by any court of competent jurisdiction or other Governmental Entity or other legal restraint or prohibition preventing or making illegal the consummation of the Transactions shall be in effect;

(b) the Acquiror Stockholder Approval shall have been obtained;

(c) the Company Stockholder Approval shall have been obtained;

(d) Nasdaq Approval shall have been obtained;

(e) the Form S-4 shall have been declared effective by the SEC under the Securities Act and no stop order suspending the effectiveness of the Form S-4 shall have been issued and no proceedings for that purpose shall have been initiated or threatened; and

(f) all conditions for the closing of the Sale Transaction shall have been performed or waived in accordance with the Sale Transaction Agreements and the Sale Transaction shall be consummated concurrently with the consummation of the Merger.

Section 7.2 Other Conditions to the Obligations of the Acquiror Parties. The obligations of the Acquiror Parties to consummate, or cause to be consummated, the Transactions are subject to the satisfaction or, if permitted by applicable Law, waiver by Acquiror (on behalf of itself and the other Acquiror Parties) of the following further conditions:

(a) (i) the Company Fundamental Representations (other than the representations and warranties set forth in Section 4.2) shall be true and correct in all respects as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects as of such earlier date), (ii) the representations and warranties set forth in Section 4.2(a) shall be true and correct in all respects (except for *de minimis* inaccuracies) as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects (except for *de minimis* inaccuracies) as of such earlier date), and (iii) the representations and warranties of the Company set forth in Article 4 (other than the Company Fundamental Representations) shall be true and correct (without giving effect to any limitation as to "materiality," "Company Impairment Effect" or "Company Material Adverse Effect" or any similar limitation set forth herein) in all respects as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects as of such earlier date), except where the failure of such representations and warranties to be true and correct, taken as a whole, does not cause a Company Material Adverse Effect or Company Impairment Effect;

(b) the Company shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by the Company under this Agreement at or prior to the Closing;

(c) since the date of this Agreement, no Company Impairment Effect shall have occurred and be continuing and no Company Material Adverse Effect shall have occurred;

(d) the Approving Company Stockholders shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by them under the Support Agreements at or prior to the Closing;

(e) at or prior to the Closing, the Company shall have delivered, or caused to be delivered, to Acquiror the following documents:

(i) a certificate duly executed by an authorized officer of the Company, dated as of the Closing Date, to the effect that the conditions specified in Section 7.2(a), Section 7.2(b) and Section 7.2(c) are satisfied, in a form and substance reasonably satisfactory to Acquiror;

(ii) certificates of good standing with respect to each Company Group Member issued by the applicable jurisdiction where such entities are formed or qualified to do business, each dated as of the most recent practicable date; and

(iii) a certificate duly executed by an authorized officer of the Company (in form and substance reasonably satisfactory to Acquiror) conforming to the requirements of Treasury Regulations Sections 1.897-2(h)(2) and 1.1445-2(c)(3).

Section 7.3 Other Conditions to the Obligations of the Company. The obligations of the Company to consummate the Transactions are subject to the satisfaction or, if permitted by applicable Law, waiver by the Company of the following further conditions:

(a) (i) the Acquiror Fundamental Representations (other than the representations and warranties set forth in Section 5.2) shall be true and correct in all respects

as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects as of such earlier date), (ii) the representations and warranties set forth in Section 5.2 shall be true and correct in all respects (except for *de minimis* inaccuracies) as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects (except for *de minimis* inaccuracies) as of such earlier date), and (iii) the representations and warranties of the Acquiror Parties set forth in Article 5 (other than the Acquiror Fundamental Representations) shall be true and correct (without giving effect to any limitation as to "materiality," "Acquiror Impairment Effect" or "Acquiror Material Adverse Effect" or any similar limitation set forth herein) in all respects as of the Closing Date, as though made on and as of the Closing Date (except to the extent that any such representation and warranty is made as of an earlier date, in which case such representation and warranty shall be true and correct in all respects as of such earlier date), except where the failure of such representations and warranties to be true and correct, taken as a whole, does not cause an Acquiror Material Adverse Effect or Acquiror Impairment Effect;

(b) the Acquiror Parties shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by the Acquiror Parties under this Agreement at or prior to the Closing;

(c) since the date of this Agreement, no Acquiror Impairment Effect shall have occurred and be continuing and no Acquiror Material Adverse Effect shall have occurred;

(d) the Acquiror Supporting Stockholders shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by them under the Support Agreements and the Side Letters, as applicable, at or prior to the Closing;

(e) the Acquiror Common Stock shall have been continually listed on Nasdaq as of and from the date of this Agreement through the Effective Time;

(f) the Acquiror Group Members shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by them under the Sale Transaction Agreements at or prior to the Closing;

(g) the Acquiror Convertible Noteholders and Acquiror shall have performed and complied in all material respects with the covenants and agreements required to be performed or complied with by them under the Exchange Agreements at or prior to the Closing, the Exchanges shall have been consummated, all Contracts relating to the Acquiror Convertible Notes (other than the Exchange Agreements) shall have been terminated (effective as of the Effective Time) and all Encumbrances on any assets of any Acquiror Group Member shall have been released (effective as of the Effective Time);

(h) the Redemptions shall have been consummated, and the Certificates of Designation of the Acquiror Series A Preferred Stock and Acquiror Series B Preferred Stock shall have been withdrawn in accordance with the DGCL;

(i) the Exchanges shall have been consummated, the Acquiror Special Voting Share shall have been cancelled, all Contracts relating to the Exchangeable Shares and the Special Voting Share shall have been terminated and the Certificate of Designations of the Acquiror Special Voting Share shall have been withdrawn in accordance with the DGCL;

(j) the Wind Down shall have been completed to the reasonable satisfaction of Acquiror;

(k) all direct and indirect Subsidiaries of Acquiror, other than the Acquiror Canada Holdco, Acquiror Exchange Co., MJF and Ample, shall have been dissolved in accordance with applicable Law;

(l) the Reverse Split shall have been consummated;

(m) Acquiror shall have delivered evidence reasonably acceptable to the Company that all accrued fees, costs, expenses, Liabilities, Indebtedness or other owed payments (including, but not limited to, any costs arising from insurance, change of control payments, severance, settlements, legal fees, indemnification, investigations, advisor fees, compensation, benefits, employment or otherwise) of the Acquiror Group as of immediately prior to the Effective Time shall have been paid or otherwise satisfied in full;

(n) Acquiror shall have cash on hand of at least $500,000;

(o) all conditions precedent for the Post-Closing Exchanges to occur immediately following the Effective Time shall have been satisfied, such that immediately following the Effective Time, there shall be no shares of Acquiror Series C Preferred Stock issued and outstanding, and the Acquiror Convertible Notes shall be repaid or otherwise satisfied in full without any ongoing Liability to Acquiror; and

(p) at or prior to the Closing, Acquiror shall have delivered, or caused to be delivered, the following documents to the Company:

(i) a certificate duly executed by an authorized officer of Acquiror, dated as of the Closing Date, to the effect that the conditions specified in Section 7.1(f), Section 7.3(a), Section 7.3(b), Section 7.3(c), Section 7.3(f), Section 7.3(g), Section 7.3(h), Section 7.3(i), Section 7.3(k), Section 7.3(l), Section 7.3(m), Section 7.3(n) and Section 7.3(o) are satisfied, in a form and substance reasonably satisfactory to the Company;

(ii) duly executed resignation letters from the officers and directors of Acquiror, as contemplated by Section 6.13(a)(ii); and

(iii) certificates of good standing with respect to each Acquiror Group Member issued by the applicable jurisdiction where such entities are formed or qualified to do business, each dated as of the most recent practicable date.

Section 7.4 Frustration of Closing Conditions. The Company may not rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure was proximately caused by the Company's failure to use commercially reasonable efforts to cause the Closing to occur, as required by Section 6.2, or a material breach of this Agreement by the Company. None of the Acquiror Parties may rely on the failure of any condition set forth in this Article 7 to be satisfied if such failure was proximately caused by an Acquiror Party's failure to use commercially reasonable efforts to cause the Closing to occur, as required by Section 6.2, or a material breach of this Agreement by an Acquiror Party.

ARTICLE 8
TERMINATION

Section 8.1 Termination. This Agreement may be terminated and the Transactions may be abandoned at any time prior to the Closing, whether before or after the Acquiror Stockholder Approval has been obtained:

(a) by mutual written consent of Acquiror and the Company;

(b) by Acquiror, if any of the representations or warranties set forth in Article 4 shall not be true and correct or if the Company has failed to perform any covenant or agreement on the part of the Company set forth in this Agreement (including an obligation to consummate the Closing) such that the conditions to Closing set forth in either Section 7.2(a) or Section 7.2(b) will not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, or the failures to perform any covenant or agreement, as applicable, is (or are) not cured or cannot be cured within the earlier of (i) thirty (30) days after written notice thereof is delivered to the Company by Acquiror, and (ii) the fifth (5th) Business Day prior to the Termination Date; provided, however, that none of the Acquiror Parties is then in breach of this Agreement so as to prevent the conditions to Closing set forth in either Section 7.3(a) or Section 7.3(b) from being satisfied;

(c) by the Company, if any of the representations or warranties set forth in Article 5 shall not be true and correct or if any Acquiror Party has failed to perform any covenant or agreement on the part of such applicable Acquiror Party set forth in this Agreement (including an obligation to consummate the Closing), other than with respect to a breach of Section 6.6, Section 6.8(c) or Section 8.4, as to which Section 8.1(f)(iv) will apply, such that the condition to Closing set forth in either or Section 7.3(a) or Section 7.3(b) will not be satisfied and the breach or breaches causing such representations or warranties not to be true and correct, or the failures to perform any covenant or agreement, as applicable, is (or are) not cured or cannot be cured within the earlier of (i) thirty (30) days after written notice thereof is delivered to Acquiror by the Company and (ii) the fifth (5th) Business Day prior to the Termination Date; provided, however, that the Company is not then in breach of this Agreement so as to prevent the condition to Closing set forth in Section 7.2(a) or Section 7.2(b) from being satisfied;

(d) by either Acquiror or the Company, if the Transactions shall not have been consummated on or prior to the Termination Date; provided that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to (i) Acquiror, if any Acquiror Party's breach of any of its covenants or obligations under this Agreement shall have proximately caused the failure to consummate the Transactions on or before the Termination Date, (ii) the Company, if the Company's breach of its covenants or obligations under this Agreement shall have proximately caused the failure to consummate the Transactions on or before the Termination Date and (iii) either Acquiror or the Company if any Proceeding for specific performance to compel the Closing is pending in a court specified in Section 9.15 as of the Termination Date;

(e) by either Acquiror or the Company, if:

(i) any Governmental Entity shall have issued an Order or taken any other action permanently enjoining, restraining or otherwise prohibiting any of the Transactions and such Order or other action shall have become final and nonappealable; or

(ii) if the Acquiror Stockholder Approval shall not have been obtained at the Acquiror Stockholders Meeting duly convened therefor or at any adjournment or postponement thereof at which a vote on the adoption of this Agreement was taken; provided that Acquiror shall not be permitted to terminate this Agreement pursuant to this Section 8.1(e)(ii) if the failure to obtain such Acquiror Stockholder Approval is proximately caused by any action or failure to act of Acquiror that constitutes a breach of this Agreement;

(f) by the Company, if:

(i) an Adverse Recommendation Change shall have occurred;

(ii) within 10 Business Days of a tender or exchange offer relating to securities of Acquiror having been commenced, Acquiror fails to publicly recommend against such tender or exchange offer;

(iii) Acquiror fails to publicly reaffirm its recommendation of the Transactions within 5 Business Days after the date any Acquisition Proposal or any material modification thereto is first commenced, publicly announced, distributed or disseminated to the Acquiror Stockholders upon a request to do so by the Company;

(iv) Acquiror breaches or fails to perform any of its obligations set forth in Section 6.6, Section 6.8(c) or Section 8.4;

(v) the Acquiror Board (or any committee thereof) formally resolves or publicly authorizes or proposes to take any of the foregoing actions;

(g) by Acquiror, at any time prior to obtaining the Acquiror Stockholder Approval, in order to accept a Superior Proposal in accordance with Section 6.6(b); provided, that Acquiror shall have (i) simultaneously with such termination entered into the associated Alternative Acquisition Agreement, (ii) otherwise complied with all provisions of Section 6.6(b), including the notice provisions thereof, and (iii) paid any amounts due pursuant to Section 8.3.

The Party desiring to terminate this Agreement pursuant to this Section 8.1 (other than pursuant to Section 8.1(a)) shall give notice of such termination to the other party.

Section 8.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 8.1, this entire Agreement shall forthwith become void (and there shall be no Liability or obligation on the part of the Parties and their respective Representatives); provided, that:

(a) (i) Section 4.19, Section 5.24, Section 6.3(a), this Section 8.2, Section 8.3, Section 8.4, Article 9 and Article 1 (to the extent related to the foregoing), each of which shall survive such termination and remain valid and binding obligations of the Parties and (ii) the Confidentiality Agreement, which shall survive such termination and remain valid and binding obligations of the parties thereto in accordance with their respective terms;

(b) Acquiror may have liability as provided in Section 8.3; and

(c) the termination of this Agreement pursuant to Section 8.1 shall not affect any Liability on the part of any Party for the Willful Breach of this Agreement by, or any Fraud of, such Party (or in the case of Acquiror, Acquiror or Merger Sub).

Section 8.3 Certain Termination Matters.

(a) In the event that:

(i) (A) prior to termination of this Agreement, an Acquisition Proposal (whether or not conditional) or intention to make an Acquisition Proposal (whether or not conditional) is made directly to the Acquiror Stockholders or is otherwise publicly disclosed or otherwise communicated to senior management of Acquiror or the Acquiror Board and not expired or been publicly withdrawn prior the Termination Date or the Acquiror Stockholder Meeting, as applicable, (B) this Agreement is terminated by Acquiror or the Company pursuant to Section 8.1(d) or Section 8.1(e)(ii), or by the Company pursuant to Section 8.1(c) due to any Willful Breach or Fraud by an Acquiror Party and (C) within 12 months after the date of such termination, Acquiror enters into an agreement in respect of any Acquisition Proposal, or recommends or submits an Acquisition Proposal to the Acquiror Stockholders for adoption, or a transaction in respect of any Acquisition Proposal is consummated, which, in each case, need not be the same Acquisition Proposal that was made, disclosed or communicated prior to termination hereof (provided, that for purposes of this clause (C), each reference to "5%" or "10%" in the definition of "Acquisition Proposal" shall be deemed to be a reference to "50%");

(ii) this Agreement is terminated by the Company pursuant to Section 8.1(f); or

(iii) this Agreement is terminated by Acquiror pursuant to Section 8.1(g);

then, in any such event, Acquiror shall pay to the Company a fee of $275,000 (the "Termination Fee"), less the amount of Reimbursed Expenses previously paid to the Company (if any) pursuant to Section 8.3(b), it being understood that in no event shall Acquiror be required to pay the Termination Fee on more than one occasion.

(b) In the event that this Agreement is terminated by the Company pursuant to Section 8.1(c) under circumstances in which the Termination Fee is not then payable pursuant to Section 8.3(a)(i), then Acquiror shall reimburse the Company and its Affiliates for all of their fees, costs and expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to the Company and its Affiliates) incurred by the Company or its Affiliates or on their behalf in connection with or related to the authorization, preparation, investigation, negotiation, execution and performance of this Agreement and the transactions contemplated hereby (the "Reimbursed Expenses"), up to a maximum amount of $100,000; provided, that the payment by Acquiror of the Reimbursed Expenses shall not (A) relieve Acquiror of any subsequent obligation to pay the Termination Fee pursuant to Section 8.3(a)(i) or (B) relieve Acquiror from any liability for the Willful Breach of this Agreement by, or any Fraud of, any Acquiror Party.

(c) Payment of the Termination Fee shall be made by wire transfer of same day funds to the accounts designated by the Company (i) on the consummation of any transaction contemplated by an Acquisition Proposal in the case of a Termination Fee payable pursuant to Section 8.3(a)(i), or (ii) as promptly as reasonably practicable after termination (and, in any event, within two Business Days thereof), in the case of a Termination Fee payable pursuant to any other provision of this Section 8.3. Payment of the Reimbursed Expenses shall be made by wire transfer of same day funds to the accounts designated by the Company within two Business Days after the Company notifies Acquiror of the amounts thereof.

(d) Each Acquiror Party acknowledges that the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Company would not enter into this Agreement. Accordingly, if Acquiror fails promptly to pay any amounts due pursuant to this Section 8.3, and, in order to obtain such payment, the Company commences a suit that results in a judgment against Acquiror for the amounts set forth in this Section 8.3, Acquiror shall also pay the Company its fees, costs and expenses (including attorneys' fees and expenses) in connection with such suit, together with interest on the amounts due pursuant to this Section 8.3 from the date such payment was required to be made until the date of payment at the prime lending rate as published in The Wall Street Journal in effect on the date such payment was required to be made.

(e) The payment, when due and paid, by Acquiror of the Termination Fee pursuant to this Section 8.3 shall be the sole and exclusive remedy of the Company in the event of the termination of this Agreement under the circumstances requiring the payment of the Termination Fee pursuant to this Section 8.3. For the avoidance of doubt, in the event that the Company actually receives the Termination Fee (and, to the extent applicable, any other amounts payable under Section 8.3(d)), the receipt thereof shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by the Company that the Company may be otherwise entitled to pursue under this Section 8.3, and in such case the Company shall not be entitled to bring or maintain any Proceeding or make any claim against any Acquiror Party arising out of or relating to this Agreement or any of the transactions contemplated hereby, except as set forth in the last sentence of Section 8.3(d). Notwithstanding the foregoing, nothing in this Section 8.3(e) shall, or shall be deemed or construed to, relieve any Acquiror Party from liability for Fraud, limit any recourse or remedy available to any the Company in respect of an Acquiror Party's Fraud, or preclude a determination that Fraud occurred.

Section 8.4 Restrictive Covenants.

(a) During the period beginning on the date of this Agreement and ending on the earlier of (x) the Closing and (y) the fifth anniversary of the date that this Agreement is terminated in accordance with Article 8 (such period, the "Restricted Period"), except as otherwise pre-approved in writing by the Company, Acquiror covenants that neither Acquiror nor any Acquiror Group Member, nor any of their respective Affiliates, shall, directly or indirectly, in any capacity, for the benefit of any Person (other than the Company or any Affiliate of the Company), (i) establish or engage in the business of cryptocurrency mining (the "Company Business") anywhere in the world (the "Restricted Territory"), including by way of the purchase (whether by way of stock purchase, asset purchase, merger, consolidation, exclusive license, or otherwise) of a Person (or the business or assets of a Person) engaged in the Company Business anywhere in the Restricted Territory, (ii) own any interest in, manage, operate, join, control, render financial assistance to, consult with, receive any economic benefit from, exert any influence upon, participate in, render services or advice to, extend credit to, guarantee, or otherwise participate in any of the foregoing in respect of, any Person that engages in the Company Business anywhere in the Restricted Territory, or (iii) or knowingly attempt to do any of the foregoing.

(b) Acquiror acknowledges and agrees that it will receive substantial benefits by virtue of the transactions contemplated by this Agreement, that the restrictions contained in this Section 8.4 are reasonable in all respects (including with respect to subject matter, time period, and geographical area), are no greater than necessary to fully vest in the Company the benefits of the transactions contemplated by this Agreement, and constitute a material inducement to the Company to enter into this Agreement and consummate the transactions contemplated by this Agreement.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Non-Survival. The representations, warranties, agreements and covenants in this Agreement shall terminate at the Effective Time, except (a) for those covenants and agreements that, by their terms, survive or contemplate performance after the Effective Time and (b) this Article 9 and any corresponding definitions set forth in Article 1.

Section 9.2 Entire Agreement; Assignment. This Agreement (together with the Ancillary Documents and the Confidentiality Agreement) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, among the Parties

with respect to the subject matter hereof. This Agreement may not be assigned by any Party (whether by operation of law or otherwise) without the prior written consent of Acquiror and the Company. Any attempted assignment of this Agreement not in accordance with the terms of this Section 9.2 shall be void.

Section 9.3 Amendment. This Agreement may be amended or modified only by a written agreement executed and delivered by Acquiror and the Company. This Agreement may not be modified or amended except as provided in the immediately preceding sentence and any purported amendment by any Party or Parties effected in a manner which does not comply with this Section 9.3 shall be void, *ab initio.*

Section 9.4 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given) by delivery in person, by e-mail (having obtained electronic delivery confirmation thereof), or by registered or certified mail (postage prepaid, return receipt requested) (upon receipt thereof) to the other Parties as follows:

(a) If to any Acquiror Party, to:

Akerna Corp.
1550 Larimer Street, #246
Denver, Colorado 80202
Attention: Jessica Billingsley, Chief Executive Officer
Telephone: (970) 729-0372
E-mail: jlb@akerna.com

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

Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, CO 80202
Attention: Jason Brenkert
Telephone: (303) 352-1133
E-mail: brenkert.jason@dorsey.com

(b) If to the Company, to:

Gryphon Digital Mining, Inc.
5953 Mabel Road, Unit 138
Las Vegas, NV 89110
Attention: Robert Chang; Daniel Tolhurst
Telephone: (877) 646-3374
E-mail: rob@gryphonmining.com; dan@gryphonmining.com

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

K&L Gates LLP
1 Park Plaza, 12th Floor
Irvine, CA 92614
Attention: Michael A. Hedge; Jason C. Dreibelbis
Telephone: (949) 623-3519
E-mail: michael.hedge@klgates.com; jason.dreibelbis@klgates.com

or to such other address as the Party to whom notice is given may have previously furnished to the others in writing in the manner set forth above.

Section 9.5 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the Transactions, including the applicable statute of limitations, shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Law of any jurisdiction other than the State of Delaware.

Section 9.6 Fees and Expenses. Except as otherwise set forth in this Agreement, including Section 8.3, all fees and expenses incurred in connection with this Agreement, the Ancillary Documents and the Transactions, including the fees and disbursements of counsel, financial advisors and accountants, shall be paid by the Party incurring such fees or expenses.

Section 9.7 Construction; Interpretation. The term "this Agreement" means this Agreement and Plan of Merger together with the Schedules and Annexes hereto, as the same may from time to time be amended, modified, supplemented or restated in accordance with the terms hereof. The headings set forth in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. No Party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions hereof, and all provisions of this Agreement shall be construed according to their fair meaning and not strictly for or against any Party. Unless otherwise indicated to the contrary herein by the context or use thereof: (a) the words, "herein," "hereto," "hereof" and words of similar import refer to this Agreement as a whole, including the Schedules and Annexes, and not to any particular section, subsection, paragraph, subparagraph or clause set forth in this Agreement; (b) masculine gender shall also include the feminine and neutral genders, and vice versa; (c) words importing the singular shall also include the plural, and vice versa; (d) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation"; (e) references to "$" or "dollar" or "US$" shall be references to United States dollars; (f) the word "or" is disjunctive but not necessarily exclusive; (g) the words "writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; (h) the word "day" means calendar day unless Business Day is expressly specified; (i) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not mean simply "if"; (j) all references to Articles, Sections, Annexes or Schedules are to Articles, Sections, Annexes and Schedules of this Agreement; (k) the words "provided" or "made available" or words of similar import (regardless of whether capitalized or not) shall mean, when used with reference to documents or other materials required to be provided or made available (i) to Acquiror, any documents or other materials posted to the "Gryphon VDR" electronic data room hosted by Google Drive and (ii) to the Company, any documents or other materials posted to the "Akerna VDR" hosted by Intralinks, in each case as of 5:00 p.m., New York City time, at least two (2) Business Days prior to the date of this Agreement; (l) all references to any Law will be to such Law as amended, supplemented or otherwise modified or re-enacted from time to time and all rules and regulations promulgated thereunder; and (m) all references to any Contract are to such Contract as amended or modified from time to time in accordance with the terms thereof (subject to any restrictions on amendments or modifications set forth in this Agreement); provided that this clause (m) shall not apply with respect to the Company Disclosure Schedules or the Acquiror Disclosure Schedules. If any action under this Agreement is required to be done or taken on a day that is not a Business Day, then such action shall be required to be done or taken not on such day but on the first succeeding Business Day thereafter.

Section 9.8 Annexes and Schedules. All Annexes and Schedules, or documents expressly incorporated into this Agreement, are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement. The Schedules shall be arranged in sections and subsections corresponding to the numbered and lettered Sections and subsections set forth in this Agreement. Any item disclosed in the Company Disclosure Schedules or in the Acquiror Disclosure Schedules corresponding to any Section or subsection of Article 4 (in the case of the Company Disclosure Schedules) or Article 5 (in the case of the Acquiror Disclosure Schedules) shall be deemed to have been disclosed with respect to every other section and subsection of Article 4 (in the case of the Company Disclosure Schedules) or Article 5 (in the case of the Acquiror Disclosure Schedules), as applicable, where the relevance of such disclosure to such other Section or subsection is reasonably apparent on the face of the disclosure. The information and disclosures set forth in the Schedules that correspond to the section or subsections of Article 4 or Article 5 may not be limited to matters required to be disclosed in the Schedules, and any such additional information or disclosure is for informational purposes only and does not necessarily include other matters of a similar nature. The inclusion of any information in the Company Disclosure Schedules or the Acquiror Disclosure Schedules shall not be deemed to be an admission or acknowledgement, in and of itself, that such information has resulted in or would reasonably be expected to result in a Company Material Adverse Effect or an Acquiror Material Adverse Effect.

Section 9.9 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and, except as provided in Section 6.11 and Section 6.12, nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Severability. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable Law, but if any term or other provision of this Agreement is held to be invalid, illegal or unenforceable under applicable Law, all other provisions of this Agreement shall remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision of this Agreement is invalid, illegal or unenforceable under applicable Law, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

Section 9.11 Counterparts; Electronic Signatures. This Agreement and each Ancillary Document (including any of the closing deliverables contemplated hereby) may be executed manually or electronically in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement or any Ancillary Document (including any of the closing deliverables contemplated hereby) by facsimile, e-mail, or scanned pages shall be effective as delivery of a manually executed counterpart to this Agreement or any such Ancillary Document.

Section 9.12 Knowledge of Company; Knowledge of Acquiror. For all purposes of this Agreement, the phrase "to the Company's knowledge" and "known by the Company" and any derivations thereof shall mean as of the applicable date, the actual knowledge following reasonable inquiry of the individuals set forth on Section 9.12 of the Company Disclosure Schedules. For all purposes of this Agreement, the phrase "to Acquiror's knowledge" and "to the knowledge of Acquiror" and any derivations thereof shall mean as of the applicable date, the actual knowledge following reasonable inquiry of the individuals set forth on Section 9.12 of the Acquiror Disclosure Schedules. For the avoidance of doubt, none of the individuals set forth on Section 9.12 of the Company Disclosure Schedules or Section 9.12 of the Acquiror Disclosure Schedules shall have any personal Liability or obligations regarding such knowledge.

Section 9.13 Extension; Waiver. The Company may (a) extend the time for the performance of any of the obligations or other acts of the Acquiror Parties set forth herein, (b) waive any inaccuracies in the representations and warranties of the Acquiror Parties set forth herein or (c) waive compliance by the Acquiror Parties with any of the agreements or conditions set forth herein. Acquiror may (i) extend the time for the performance of any of the obligations or other acts of the Company set forth herein, (ii) waive any inaccuracies in the representations and warranties of the Company set forth herein or (iii) waive compliance by the Company with any of the agreements or conditions set forth herein. Any agreement on the part of any such Party to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any Party to assert any of its rights hereunder shall not constitute a waiver of such rights.

Section 9.14 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY PROCEEDING (I) ARISING UNDER THIS AGREEMENT OR UNDER ANY ANCILLARY DOCUMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR ANY OF THE TRANSACTIONS OR ANY FINANCING IN CONNECTION WITH THE TRANSACTIONS, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH PROCEEDING SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY 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, (B) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (D) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.14.

Section 9.15 Submission to Jurisdiction. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware does not have jurisdiction, a federal court sitting in Wilmington, Delaware), for the purposes of any Proceeding (a) arising under this Agreement or under any Ancillary Document or (b) in any way connected with or related or incidental to the dealings of the Parties in respect of this Agreement or any Ancillary Document or any of the Transactions, and irrevocably and unconditionally waives any objection to the laying of venue of any such Proceeding in any such court, and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Proceeding has been brought in an inconvenient forum. Each Party hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any Proceeding (i) arising under this Agreement or under any Ancillary Document or (ii) in any way connected with or related or incidental to the dealings of the Parties in respect of this Agreement or any Ancillary Document or any of the Transactions, (A) any claim that it is not personally subject to the jurisdiction of the courts as described in this Section 9.15 for any reason, (B) that it or its property is exempt or immune from the jurisdiction of any such court or from any Proceeding commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (C) that (x) the Proceeding in any such court is brought in an inconvenient forum, (y) the venue of such Proceeding is improper or (z) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each Party agrees that service of any process, summons, notice or document by registered mail to such Party's respective address set forth in Section 9.4 shall be

effective service of process for any such Proceeding.

Section 9.16 Remedies. Except as otherwise expressly provided herein, any and all remedies provided herein will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. The Parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the Parties do not perform their respective obligations under the provisions of this Agreement (including failing to take such actions as are required of them hereunder to consummate the Transactions) in accordance with their specific terms or otherwise breach such provisions. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in each case, without posting a bond or undertaking and without proof of damages and this being in addition to any other remedy to which they are entitled at law or in equity. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that the other Parties have an adequate remedy at law or an award of specific performance is not an appropriate remedy for any reason at law or equity.

Section 9.17 Side Letters and Exchange Agreements. From and after the date of this Agreement until the earlier of the Closing and the termination of this Agreement in accordance with Article 8, (a) Acquiror shall not terminate, waive, amend, supplement, release, assign or modify any provision of any Side Letter or Exchange Agreement without the prior written consent of the Company (which may be given or withheld in its sole discretion) and (b) the Company shall be entitled to require Acquiror to exercise its rights and remedies under the Side Letters and the Exchange Agreements, which shall include seeking any injunctive relief available, and to enforce the provisions of the Side Letters and the Exchange Agreements. All costs associated with any such exercise of rights and remedies or enforcement shall be borne by Acquiror.

[*remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed on its behalf as of the day and year first above written.

AKERNA CORP.

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

AKERNA MERGER CO.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: President

GRYPHON DIGITAL MINING, INC.

By: /s/ Rob Chang
Name: Rob Chang
Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

Exhibit 2.3

VOTING AND SUPPORT AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made as of the ____ day of January, 2023.

BETWEEN:

THE PERSONS LISTED ON APPENDIX A HERETO, (collectively, the "**Stockholders**" and each individually a "**Stockholder**")

- and -

POSABIT SYSTEMS CORPORATION, a British Columbia corporation ("**POSaBIT**")

WHEREAS, each Stockholder is the registered and/or direct or indirect beneficial owner of the shares of common stock or preferred stock ("**KERN Shares**"), stock options, restricted stock units, warrants, or convertible notes ("**KERN Convertible Securities**") in the capital of Akerna Corp., a Delaware corporation ("**KERN**"), set forth opposite such Stockholder's name in Appendix A hereto (collectively, the "**Subject Securities**");

WHEREAS, concurrently herewith, KERN, Akerna Canada Ample Exchange Inc., an Ontario corporation ("**ExchangeCo**"), and POSaBIT are entering into a Securities Purchase Agreement (the "**SPA**") pursuant to which (and subject to the terms and conditions set forth therein) (i) POSaBIT or a Subsidiary of POSaBIT will acquire all of the issued and outstanding membership interests of MJ Freeway, LLC, a Colorado limited liability company, from KERN and (ii) POSaBIT will acquire all of the issued and outstanding common and preferred shares of Ample Organics Inc., an Ontario corporation, from ExchangeCo (collectively, the "**Purchase and Sale**");

WHEREAS, in order for each Stockholder to realize the benefits that will accrue to such Stockholder in connection with the consummation of the Purchase and Sale and the other transactions contemplated in connection with the SPA (the "**Transactions**"), each Stockholder desires to enter into this Agreement to provide his, her or its support for completion of the Seller's Stockholder Matters on the terms and conditions set forth herein;

WHEREAS, each Stockholder acknowledges that POSaBIT would not enter into the SPA but for the execution and delivery of this Agreement by such Stockholder;

WHEREAS, this Agreement sets out the terms and conditions of the agreement of each Stockholder to abide by the covenants in respect of the Subject Securities and the other restrictions and covenants set forth herein; and

WHEREAS, the foregoing recitals, and the representations, warranties and covenants provided herein, are made or provided by each Stockholder only with respect to such Stockholder and such Stockholder's Subject Securities and, for greater certainty, are not made or provided in relation to any other Stockholder or such other Stockholder's Subject Securities.

NOW, THEREFORE, this Agreement witnesses that, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions in SPA

All terms used in this Agreement that are not defined elsewhere in this Agreement and that are defined in the SPA shall have the respective meanings ascribed to them in the SPA.

1.2 Appendices

The following Appendices attached hereto constitute an integral part of this Agreement:

Appendix A	-	Subject Securities
Appendix B	-	SPA

ARTICLE 2
COVENANTS OF THE STOCKHOLDERS

2.1 Stockholder Support

In connection with the Seller's Stockholder Matters (and any other transactions contemplated in connection with the SPA), each of the Stockholders severally, and not jointly or jointly and severally, hereby covenants, undertakes and agrees from time to time, until such time as this Agreement is terminated in accordance with Article 4, to cause to be counted as present for purposes of establishing quorum and to vote (or cause to be voted) all of the Subject Securities (to the extent they carry a right to vote): (i) at any meeting of any of the securityholders of KERN at which the Stockholder or any registered or beneficial owner of the Subject Securities are entitled to vote to obtain the Required Seller's Stockholder Vote; or (ii) in any action by written consent of the securityholders of KERN, in favor of the Seller's Stockholder Matters.

2.2 Restrictions with Respect to Subject Securities

Each Stockholder hereby severally, and not jointly or jointly and severally, covenants and agrees that, from the date hereof until the earlier of (i) the Closing, (ii) the termination of this Agreement in accordance with Article 4, or (iii) it being determined (by mutual agreement of KERN and POSaBIT) that the Required Seller's Stockholder Vote is not required, except as permitted by this Agreement, such Stockholder will:

(a) not, directly or indirectly, option, sell, assign, transfer, pledge, encumber, grant a participation or security interest in or power of attorney over, hypothecate or otherwise convey or dispose of any Subject Securities, or any right or interest therein (legal or equitable), to any Person or group or Persons acting jointly or in concert or enter into any agreement, option or other arrangement to do any of the foregoing (each of the foregoing, a "**Transfer**"), other than to one or more of a parent, spouse, child or grandchild of, or a corporation, partnership, limited liability company or other entity controlled solely by, the Stockholder or a trust or account (including a Registered Retirement Savings Plan, Registered Education Savings Plan, Registered Retirement Income Fund or similar account) existing for the benefit of such Person or entity; provided, that a Transfer referred to in this sentence shall only be permitted if, as a precondition to such Transfer, the transferee agrees in writing, in form and substance reasonably acceptable to POSaBIT, to be bound by all of the terms of this Agreement with respect to the Subject Securities; and provided further, that in the case of a Transfer to a corporation, partnership, limited liability company or other entity solely controlled by, the Stockholder, such entity shall remain solely controlled by the Stockholder until the earlier of: (i) the Closing; and (ii) the termination of this Agreement in accordance with Article 4. Any purported transfer of any Subject Securities or interest therein in violation of this Section 2.2(a) shall be null and void;

(b) not, directly or indirectly, grant or agree to grant any proxy or other right to vote any Subject Securities, except for any proxies granted to vote in favor of the Seller's Stockholder Matters in accordance with Section 2.1, or enter into any voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the stockholders of KERN or give consents or approval of any kind as to any Subject Securities;

(c) not vote or cause to be voted any Subject Securities in favor of, and vote or cause to be voted all Subject Securities against, any Acquisition Proposal or any other proposed action, transaction or agreement by or involving KERN or any of its Affiliates or the Stockholder or any other Person that could reasonably be expected to prevent, hinder or delay the successful completion of the Purchase and Sale or any of the other Transactions;

(d) other than set forth herein, take all such steps as are necessary or advisable to ensure that at all relevant times his, her or its Subject Securities will not be subject to any stockholders' agreements, voting trust or similar agreements or any option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming a stockholders' agreement, voting trust or other agreement affecting or restricting the ability of him or her to exercise all voting rights attaching to such Subject Securities; and

(e) not withdraw, amend, modify or qualify, or publicly propose or state an intention to withdraw, amend, modify or qualify, support for the Seller's Stockholder Matters.

2.3 Voting of the Subject Securityholders

Each Stockholder hereby agrees with POSaBIT that it will, on or before the fifth Business Day prior to any meeting of any of the securityholders of KERN in respect of any Seller's Stockholder Matters, duly complete forms of proxy in respect of all of his, her or its Subject Securities, and any other required documents in connection therewith, and cause same to be validly delivered in support of (and indicating that all Subject Securities are voted in favor of approving) the Seller's Stockholder Matters and will not withdraw the forms of proxy except as expressly otherwise provided in this Agreement. Each Stockholder further agrees that it will, on or before the fifth Business Day prior to any meeting of any of the securityholders of KERN in respect of any Seller's Stockholder Matters, deliver or cause to be delivered to POSABIT in accordance with Section 5.11 of this Agreement, a copy or screenshot of the duly completed and signed forms of proxy described in the preceding sentence.

2.4 Meaning of Subject Securities.

The term "**Subject Securities**" means that number of KERN Shares and KERN Convertible Securities set forth opposite a Stockholder's name in Appendix A hereto, being all of the securities of KERN owned legally or beneficially, either directly or indirectly, by such Stockholder or over which the Stockholder exercises direct or indirect control or discretion, and will be deemed to also include (a) any KERN Shares and KERN Convertible Securities issued to the Stockholder pursuant to any stock dividend, stock split, recapitalization, reclassification, combination or exchange of KERN Shares or KERN Convertible Securities on, of, or affecting the Subject Securities on or after the date of this Agreement and (b) any KERN Shares and KERN Convertible Securities acquired by the Stockholder on or after the date of this Agreement, or issued to the Stockholder, on or after the date of this Agreement (including pursuant to the exercise, conversion, settlement or vesting of any securities of KERN that are exercisable for, convertible into, settle into or vest as KERN Shares (including all Subject Securities)), and all such acquired KERN Shares and KERN Convertible Securities shall be deemed Subject Securities and subject to the terms of this Agreement as though owned by the Stockholder as of the date hereof.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Stockholder

Each Stockholder hereby severally, and not jointly or jointly and severally, represents and warrants to and covenants with POSaBIT as follows, and acknowledges that POSaBIT is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. If the Stockholder is a corporation or other legal entity, such Stockholder is a subsisting corporation or other entity under the laws of its incorporating or organizational jurisdiction. The Stockholder has all necessary power, authority, capacity and right to enter into this Agreement and to carry out each of its obligations under this Agreement. This Agreement has been duly executed and delivered by the Stockholder and, assuming due authorization, execution and delivery by POSaBIT, constitutes a legal, valid and binding agreement enforceable by POSaBIT against the Stockholder in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) Ownership of Subject Securities. The Stockholder is, and, subject to any Transfer permitted pursuant to Section 2.2(a), will be continuously up until the Closing, the direct or indirect beneficial owner of the Subject Securities set out opposite such Stockholder's name in Appendix A, with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands or rights of others of any nature or kind whatsoever. The Stockholder does not own or have any interest in any securities of KERN other than the Subject Securities. The Stockholder is not a party to, bound or affected by or subject to, any charter or by-law, contract, agreement provision, statute, regulation, judgment, order, decree or law which would be violated, contravened, breached by, or under which any default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.

(c) No Agreements. No Person has any agreement or option, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, for the purchase, acquisition or transfer of any of the Subject Securities, or any interest therein or right thereto, except pursuant to this Agreement.

(d) Voting. None of such Subject Securities is subject to any proxy, power of attorney, voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the Stockholders of KERN or give consents or approvals of any kind, except pursuant to this Agreement.

(e) Consents. No consent, waiver, approval, authorization, exemption, registration, licence or declaration of or by, or filing with, or notification to any Governmental Entity which has not been made or obtained is required to be made or obtained by the Stockholder in connection with (i) the execution and delivery by the Stockholder and enforcement against the Stockholder of this Agreement, or (ii) the consummation of any transactions by the Stockholder provided for herein.

(f) No Conflicts. None of the execution and delivery by the Stockholder of this Agreement or the compliance by the Stockholder with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of the Stockholder; (ii) any contract to which the Stockholder is a party or by which the Stockholder is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law.

(g) Legal Proceedings. There are no legal proceedings in progress or pending before any Governmental Entity or, to the knowledge of the Stockholder, threatened against the Stockholder or any of its Affiliates, or any of the Subject Securities or other property of the Stockholder or any of its Affiliates, and there is no judgment, decree or order against the Stockholder or its Affiliates, or any of the Subject Securities or other property of the Stockholder or any of its Affiliates, that would adversely affect in any manner the ability of the Stockholder to enter into this Agreement or adversely affect the Stockholder's ability to perform its obligations hereunder or the title of the Stockholder to any of its Subject Securities.

(h) No Commitment. None of the Subject Securities held by the Stockholder is the subject of any commitment, undertaking or agreement, the terms of which would affect in any way the ability of the Stockholder to perform the Stockholder's obligations with respect to such Subject Securities as set out in this Agreement.

3.2 Representations and Warranties of POSaBIT

POSaBIT hereby represents and warrants to each Stockholder as follows, and acknowledges that the Stockholder is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. POSaBIT is a corporation duly incorporated and validly existing under the laws of British Columbia and it has the requisite corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by POSaBIT and constitutes a legal, valid and binding agreement enforceable by the Stockholder against POSaBIT in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) No Conflicts. None of the execution and delivery by POSaBIT of this Agreement or the compliance by POSaBIT with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of POSaBIT; (ii) any contract to which POSaBIT is a party or by which POSaBIT is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law, except in each case as would not reasonably be expected, either individually or in the aggregate, to materially impair the ability of POSaBIT to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Purchase and Sale or any of the other Transactions.

(c) Legal Proceedings. There are no legal proceedings in progress or pending against or, to the knowledge of POSaBIT, threatened against POSaBIT or any of its Affiliates that would adversely affect in any manner the ability of POSaBIT to enter into this Agreement and to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Purchase and Sale or any of the other Transactions.

ARTICLE 4
TERMINATION

4.1 Termination

This Agreement shall terminate: (a) by a written instrument executed by each of the parties; (b) in the event that the SPA is validly terminated in accordance with its terms; (c) at the Closing; or (d) it being determined (by mutual agreement of KERN and POSaBIT) that the Required Seller's Stockholder Vote is not required.

4.2 Effect of Termination

If this Agreement is terminated in accordance with this Article 4, the provisions of this Agreement will become void in relation to such Stockholder and POSaBIT and no such party shall have liability to such other party in respect of whom this Agreement has been terminated, except in respect of a willful, intentional or material breach of the representations, warranties, obligations, terms or conditions of this Agreement which occurred prior to such termination in which case the non-breaching party to this Agreement shall be entitled to pursue any and all remedies at law or equity which may be available to it.

ARTICLE 5
GENERAL

5.1 Fiduciary Obligations

POSaBIT agrees and acknowledges that each Stockholder is bound hereunder solely in his, her or its capacity as a securityholder of KERN and that the provisions of this Agreement shall not be deemed or interpreted to bind the Stockholder or any of its directors, officers or principal Stockholders in his or her capacity as a director or officer of KERN or any of KERN's subsidiaries. For the avoidance of doubt, nothing in this Agreement shall limit or restrict any party from properly fulfilling his or her fiduciary duties as a director or officer of KERN.

5.2 Further Assurances

Each Stockholder will, from time to time, execute and deliver all such further documents and instruments and do all such acts and things as POSaBIT may reasonably require to effectively carry out or better evidence or perfect the full intent of the parties and meaning of this Agreement.

5.3 Survival of Representations and Warranties

No investigations made by or on behalf any party or any of its authorized agents at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation, warranty or covenant made by any other party herein or pursuant hereto.

5.4 Disclosure

No press release or other disclosure (public or otherwise) with respect to the existence or details of this Agreement, the Purchase and Sale or any of the other Transactions shall be made by a Stockholder without the prior written consent of POSaBIT, except to the extent required by applicable law. Each Stockholder hereby consents to the disclosure of the substance of this Agreement in any press release by POSaBIT and to the filing of this Agreement as an exhibit to any filing by POSaBIT with the United States Securities and Exchange Commission.

5.5 Assignment

Subject to prior written notice to the Stockholders, POSaBIT may assign all or part of its rights under this Agreement to an Affiliate of POSaBIT. Other then as expressly contemplated by Section 2.2(a), this Agreement shall not be otherwise assignable by a Stockholder without the prior written consent of POSaBIT, which consent may not be unreasonably withheld.

5.6 Time

Time shall be of the essence of this Agreement.

5.7 Governing Law

This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the State of Delaware and the federal laws of the United States applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Delaware with respect to any matter arising hereunder or related hereto. The parties to this Agreement hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the State of Delaware and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum. This Section 5.7 shall survive the termination of this Agreement.

5.8 Entire Agreement

This Agreement, including the appendices hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof. There are no representations, warranties, conditions, undertakings, commitments, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement.

5.9 Amendments

This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the parties hereto.

5.10 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

5.11 Notices

(a) **Method of Delivery.** Any notice, demand or other communication (in this Section, a "**notice**") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

(i) sent by electronic means of sending messages (in this Section, "**Electronic Transmission**"), by either facsimile transmission (if specified below) or e-mail, during normal business hours on a Business Day, but notice by Electronic Transmission shall only be sufficient if the notice includes or is accompanied by the sender's name and facsimile number or e-mail address as applicable, the date and time of transmission, and if sent by facsimile transmission the name and telephone number of a Person to contact in the event of facsimile transmission problems or if sent by e-mail acknowledgement that the transmission is transmitted to the sender by the recipient or the recipient's electronic system; or

(ii) delivered in person in a sealed package entitled "Personal and Confidential" addressed to the recipient during normal business hours on a Business Day and left with a receptionist or other responsible employee of the recipient, who is required to provide written acknowledgement of receipt, at the applicable address set forth below;

a. in the case of a notice to any Stockholder, to such Stockholder at the address indicated opposite to the name of the Stockholder in Appendix A; and

b. in the case of a notice to POSaBIT, addressed to it at:

POSaBIT Systems Corporation
11915 124th Ave NE
Kirkland, WA 98034
Attn: Chief Executive Officer
Email: ryan@posabit.com

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

Dentons Canada LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, Ontario, Canada
M5K 0A1
Attention: Eric Foster
E-mail: eric.foster@dentons.com

(b) **Deemed Delivery.** Each notice sent in accordance with this Section shall be deemed to have been received:

(i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered; otherwise, on the first Business Day thereafter; or

(ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day and the electronic acknowledgement of delivery is received by the sender before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.

Any party hereto may change its address for notice by written notice delivered to the other parties hereto.

5.12 Specific Performance and other Equitable Rights

It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement will cause the other party to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity, and each Stockholder will waive, in any action for specific performance, interlocutory, preliminary and permanent injunctive relief and/or any other equitable relief, the defence of adequacy of a remedy at law and any requirement for the securing or posting of any bond in connection with the obtaining of any such relief.

5.13 Expenses

Each of the parties shall pay its respective legal, financial advisory and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed or prepared pursuant hereto and any other related costs and expenses whatsoever and howsoever incurred.

5.14 Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement.

To evidence the fact that a party hereto has executed this Agreement, such party may send a copy of its executed counterpart to the other parties hereto by Electronic Transmission and if sent by email, in Portable Document File (PDF) format. That party will be deemed to have executed this Agreement on the date it sent such Electronic Transmission.

5.15 Independent Legal Advice

Each Stockholder acknowledges that:

(a) the Stockholder has read this Agreement in its entirety, understands this Agreement and agrees to be bound by its terms and conditions;

(b) the Stockholder has been advised to seek independent legal advice with respect to the Stockholder executing and delivering this Agreement and has received such advice or has, without undue influence, elected to waive the benefit of any such advice; and

(c) the Stockholder is entering into this Agreement voluntarily.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

Jessica Billingsley

L. Dean Ditto

Ray Thompson

David McCullough

Scott Sozio

Matthew Kane

Tahira Rehmatullah

Barry Fishman

POSABIT SYSTEMS CORPORATION

By:
Name: Ryan Hamlin
Title: Chief Executive Officer

Exhibit 2.4

VOTING AND SUPPORT AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made as of the ____ day of January, 2023.

BETWEEN:

THE PERSONS LISTED ON APPENDIX A HERETO, (collectively, the "**Stockholders**" and each individually a "**Stockholder**")

- and -

GRYPHON DIGITAL MINING, INC., a Delaware corporation ("**Gryphon**")

WHEREAS, each Stockholder is the registered and/or direct or indirect beneficial owner of the shares of common stock or preferred stock ("**KERN Shares**"), stock options, restricted stock units, warrants, or convertible notes ("**KERN Convertible Securities**") in the capital of Akerna Corp., a Delaware corporation ("**KERN**") set forth opposite such Stockholder's name in Appendix A hereto (collectively, the "**Subject Securities**");

WHEREAS, concurrently herewith, KERN, Akerna Merger Co., a Delaware corporation and wholly owned subsidiary of KERN ("**Merger Sub**") and Gryphon are entering into an Agreement and Plan of Merger (the "**Merger Agreement**"), pursuant to which (and subject to the terms and conditions set forth therein) Merger Sub will merge with and into Gryphon, with Gryphon continuing as the surviving corporation in the merger (the "**Merger**");

WHEREAS, in order for each Stockholder to realize the benefits that will accrue to such Stockholder in connection with the consummation of the Merger and the other Transactions, each Stockholder desires to enter into this Agreement to provide his, her or its support for completion of the Acquiror Stockholder Approval Matters on the terms and conditions set forth herein;

WHEREAS, each Stockholder acknowledges that Gryphon would not enter into the Merger Agreement but for the execution and delivery of this Agreement by such Stockholder;

WHEREAS, this Agreement sets out the terms and conditions of the agreement of each Stockholder to abide by the covenants in respect of the Subject Securities and the other restrictions and covenants set forth herein; and

WHEREAS, the foregoing recitals, and the representations, warranties and covenants provided herein, are made or provided by each Stockholder only with respect to such Stockholder and such Subject Securities and, for greater certainty, are not made or provided in relation to any other Stockholder or such Stockholder's Subject Securities.

NOW, THEREFORE, this Agreement witnesses that, in consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions in Merger Agreement

All terms used in this Agreement that are not defined elsewhere in this Agreement and that are defined in the Merger Agreement shall have the respective meanings ascribed to them in the Merger Agreement.

1.2 Appendices

The following Appendices attached hereto constitute an integral part of this Agreement:

Appendix A	-	Subject Securities
Appendix B	-	Merger Agreement

ARTICLE 2
COVENANTS OF THE STOCKHOLDERS

2.1 Stockholder Support

In connection with the Acquiror Stockholder Approval Matters (and any other transactions contemplated in connection with the Merger Agreement), each of the Stockholders severally, and not jointly or jointly and severally, hereby covenants, undertakes and agrees from time to time, until such time as this Agreement is terminated in accordance with Article 4, to cause to be counted as present for purposes of establishing quorum and to vote (or cause to be voted) all of the Subject Securities (to the extent they carry a right to vote): (i) at any meeting of any of the securityholders of KERN at which the Stockholder or any registered or beneficial owner of the Subject Securities are entitled to vote to obtain the Acquiror Stockholder Approval; or (ii) in any action by written consent of the securityholders of KERN, in favor of the Acquiror Stockholder Approval Matters.

2.2 Restrictions with Respect to Subject Securities

Each Stockholder hereby severally, and not jointly or jointly and severally, covenants and agrees that, from the date hereof until the earlier of (i) the Effective Time, (ii) the termination of this Agreement in accordance with Article 4, or (iii) it being determined (by mutual agreement of KERN and Gryphon) that the Acquiror Stockholder Approval is not required, except as permitted by this Agreement, such Stockholder will:

(a) not, directly or indirectly, option, sell, assign, transfer, pledge, encumber, grant a participation or security interest in or power of attorney over, hypothecate or otherwise convey or dispose of any Subject Securities, or any right or interest therein (legal or equitable), to any Person or group or Persons acting jointly or in concert or enter into any agreement, option or other arrangement to do any of the foregoing (each of the foregoing, a "**Transfer**"), other than to one or more of a parent, spouse, child or grandchild of, or a corporation, partnership, limited liability company or other entity controlled solely by, the Stockholder or a trust or account (including a Registered Retirement Savings Plan, Registered Education Savings Plan, Registered Retirement Income Fund or similar account) existing for the benefit of such Person or entity; provided, that a Transfer referred to in this sentence shall only be permitted if, as a precondition to such Transfer, the transferee agrees in writing, in form and substance reasonably acceptable to Gryphon, to be bound by all of the terms of this Agreement with respect to the Subject Securities; and provided further, that in the case of a Transfer to a corporation, partnership, limited liability company or other entity solely controlled by, the Stockholder, such entity shall remain solely controlled by the Stockholder until the earlier of: (i) the Effective Time; and (ii) the termination of this Agreement in accordance with Article 4. Any purported transfer of any Subject Securities or interest therein in violation of this Section 2.2(a) shall be null and void;

(b) not, directly or indirectly, grant or agree to grant any proxy or other right to vote any Subject Securities, except for any proxies granted to vote in favor of the Acquiror Stockholder Approval Matters in accordance with Section 2.1, or enter into any voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the stockholders of KERN or give consents or approval of any kind as to any Subject Securities;

(c) not vote or cause to be voted any Subject Securities in favor of, and vote or cause to be voted all Subject Securities against, any Acquisition Proposal or any other proposed action, transaction or agreement by or involving KERN or any of its Affiliates or the Stockholder or any other Person that could reasonably be expected to prevent, hinder or delay the successful completion of the Merger or any of the other Transactions;

(d) other than set forth herein, take all such steps as are necessary or advisable to ensure that at all relevant times his, her or its Subject Securities will not be subject to any stockholders' agreements, voting trust or similar agreements or any option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming a stockholders' agreement, voting trust or other agreement affecting or restricting the ability of him or her to exercise all voting rights attaching to such Subject Securities; and

(e) not withdraw, amend, modify or qualify, or publicly propose or state an intention to withdraw, amend, modify or qualify, support for the Acquiror Stockholder Approval Matters.

2.3 Voting of the Subject Securityholders

Each Stockholder hereby agrees with Gryphon that it will, on or before the fifth Business Day prior to any meeting of any of the securityholders of KERN in respect of any Acquiror Stockholder Approval Matter, duly complete forms of proxy in respect of all of his, her or its Subject Securities, and any other required documents in connection therewith, and cause same to be validly delivered in support of (and indicating that all Subject Securities are voted in favor of approving) the Acquiror Stockholder Approval Matters and will not withdraw the forms of proxy except as expressly otherwise provided in this Agreement. Each Stockholder further agrees that it will, on or before the fifth Business Day prior to any meeting of any of the securityholders of KERN in respect of any Acquiror Stockholder Approval Matter, deliver or cause to be delivered to GRYPHON in accordance with Section 5.11 of this Agreement, a copy or screenshot of the duly completed and signed forms of proxy described in the preceding sentence.

2.4 Meaning of Subject Securities.

The term "**Subject Securities**" means that number of KERN Shares and KERN Convertible Securities set forth opposite a Stockholder's name in Appendix A hereto, being all of the securities of KERN owned legally or beneficially, either directly or indirectly, by such Stockholder or over which the Stockholder exercises direct or indirect control or discretion, and will be deemed to also include (a) any KERN Shares and KERN Convertible Securities issued to the Stockholder pursuant to any stock dividend, stock split, recapitalization, reclassification, combination or exchange of KERN Shares or KERN Convertible Securities on, of, or affecting the Subject Securities on or after the date of this Agreement and (b) any KERN Shares and KERN Convertible Securities acquired by the Stockholder on or after the date of this Agreement, or issued to the Stockholder, on or after the date of this Agreement (including pursuant to the exercise, conversion, settlement or vesting of any securities of KERN that are exercisable for, convertible into, settle into or vest as KERN Shares (including all Subject Securities)), and all such acquired KERN Shares and KERN Convertible Securities shall be deemed Subject Securities and subject to the terms of this Agreement as though owned by the Stockholder as of the date hereof.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Stockholder

Each Stockholder hereby severally, and not jointly or jointly and severally, represents and warrants to and covenants with Gryphon as follows, and acknowledges that Gryphon is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. If the Stockholder is a corporation or other legal entity, such Stockholder is a subsisting corporation or other entity under the laws of its incorporating or organizational jurisdiction. The Stockholder has all necessary power, authority, capacity and right to enter into this Agreement and to carry out each of its obligations under this Agreement. This Agreement has been duly executed and delivered by the Stockholder and, assuming due authorization, execution and delivery by Gryphon, constitutes a legal, valid and binding agreement enforceable by Gryphon against the Stockholder in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) Ownership of Subject Securities. The Stockholder is, and, subject to any Transfer permitted pursuant to Section 2.2(a), will be continuously up until the Effective Time, the direct or indirect beneficial owner of the Subject Securities set out opposite such Stockholder's name in Appendix A, with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands or rights of others of any nature or kind whatsoever. The Stockholder does not own or have any interest in any securities of KERN other than the Subject Securities. The Stockholder is not a party to, bound or affected by or subject to, any charter or by-law, contract, agreement provision, statute, regulation, judgment, order, decree or law which would be violated, contravened, breached by, or under which any default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.

(c) No Agreements. No Person has any agreement or option, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, for the purchase, acquisition or transfer of any of the Subject Securities, or any interest therein or right thereto, except pursuant to this Agreement.

(d) Voting. None of such Subject Securities is subject to any proxy, power of attorney, voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the Stockholders of KERN or give consents or approvals of any kind, except pursuant to this Agreement.

(e) Consents. No consent, waiver, approval, authorization, exemption, registration, licence or declaration of or by, or filing with, or notification to any Governmental Entity which has not been made or obtained is required to be made or obtained by the Stockholder in connection with (i) the execution and delivery by the Stockholder and enforcement against the Stockholder of this Agreement, or (ii) the consummation of any transactions by the Stockholder provided for herein.

(f) No Conflicts. None of the execution and delivery by the Stockholder of this Agreement or the compliance by the Stockholder with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of the Stockholder; (ii) any contract to which the Stockholder is a party or by which the Stockholder is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law.

(g) Legal Proceedings. There are no legal proceedings in progress or pending before any Governmental Entity or, to the knowledge of the Stockholder, threatened against the Stockholder or any of its Affiliates, or any of the Subject Securities or other property of the Stockholder or any of its Affiliates, and there is no judgment, decree or order against the Stockholder or its Affiliates, or any of the Subject Securities or other property of the Stockholder or any of its Affiliates, that would adversely affect in any manner the ability of the Stockholder to enter into this Agreement or adversely affect the Stockholder's ability to perform its obligations hereunder or the title of the Stockholder to any of its Subject Securities.

(h) No Commitment. None of the Subject Securities held by the Stockholder is the subject of any commitment, undertaking or agreement, the terms of which would affect in any way the ability of the Stockholder to perform the Stockholder's obligations with respect to such Subject Securities as set out in this Agreement.

3.2 Representations and Warranties of Gryphon

Gryphon hereby represents and warrants to each Stockholder as follows, and acknowledges that the Stockholder is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. Gryphon is a corporation duly incorporated and validly existing under the laws of Delaware and it has the requisite corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by Gryphon and constitutes a legal, valid and binding agreement enforceable by the Stockholder against Gryphon in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) No Conflicts. None of the execution and delivery by Gryphon of this Agreement or the compliance by Gryphon with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of Gryphon; (ii) any contract to which Gryphon is a party or by which Gryphon is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law, except in each case as would not reasonably be expected, either individually or in the aggregate, to materially impair the ability of Gryphon to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Merger or any of the other Transactions.

(c) Legal Proceedings. There are no legal proceedings in progress or pending against or, to the knowledge of Gryphon, threatened against Gryphon or any of its Affiliates that would adversely affect in any manner the ability of Gryphon to enter into this Agreement and to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Merger or any of the other Transactions.

ARTICLE 4
TERMINATION

4.1 Termination

This Agreement shall terminate: (a) by a written instrument executed by each of the parties; (b) in the event that the Merger Agreement is validly terminated in accordance with its terms; (c) at the Effective Time; or (d) it being determined (by mutual agreement of KERN and Gryphon) that the Acquiror Stockholder Approval is not required.

4.2 Effect of Termination

If this Agreement is terminated in accordance with this Article 4, the provisions of this Agreement will become void in relation to such Stockholder and Gryphon and no such party shall have liability to such other party in respect of whom this Agreement has been terminated, except in respect of a willful, intentional or material breach of the representations, warranties, obligations, terms or conditions of this Agreement which occurred prior to such termination in which case the non-breaching party to this Agreement shall be entitled to pursue any and all remedies at law or equity which may be available to it.

ARTICLE 5
GENERAL

5.1 Fiduciary Obligations

Gryphon agrees and acknowledges that each Stockholder is bound hereunder solely in his, her or its capacity as a securityholder of KERN and that the provisions of this Agreement shall not be deemed or interpreted to bind the Stockholder or any of its directors, officers or principal Stockholders in his or her capacity as a director or officer of KERN or any of KERN's subsidiaries. For the avoidance of doubt, nothing in this Agreement shall limit or restrict any party from properly fulfilling his or her

fiduciary duties as a director or officer of KERN.

5.2 Further Assurances

Each Stockholder will, from time to time, execute and deliver all such further documents and instruments and do all such acts and things as Gryphon may reasonably require to effectively carry out or better evidence or perfect the full intent of the parties and meaning of this Agreement.

5.3 Survival of Representations and Warranties

No investigations made by or on behalf any party or any of its authorized agents at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation, warranty or covenant made by any other party herein or pursuant hereto.

5.4 Disclosure

No press release or other disclosure (public or otherwise) with respect to the existence or details of this Agreement, the Merger or any of the other Transactions shall be made by a Stockholder without the prior written consent of Gryphon, except to the extent required by applicable law. Each Stockholder hereby consents to the disclosure of the substance of this Agreement in any press release by Gryphon and to the filing of this Agreement as an exhibit to any filing by Gryphon with the United States Securities and Exchange Commission.

5.5 Assignment

Subject to prior written notice to the Stockholders, Gryphon may assign all or part of its rights under this Agreement to an Affiliate of Gryphon. Other then as expressly contemplated by Section 2.2(a), this Agreement shall not be otherwise assignable by a Stockholder without the prior written consent of Gryphon, which consent may not be unreasonably withheld.

5.6 Time

Time shall be of the essence of this Agreement.

5.7 Governing Law

This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the State of Delaware and the federal laws of the United States applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Delaware with respect to any matter arising hereunder or related hereto. The parties to this Agreement hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the State of Delaware and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum. This Section 5.7 shall survive the termination of this Agreement.

5.8 Entire Agreement

This Agreement, including the appendices hereto, constitutes the entire agreement between the parties pertaining to the subject matter hereof. There are no representations, warranties, conditions, undertakings, commitments, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement, or which induced any party hereto to enter into this Agreement or on which reliance is placed by any party hereto, except as specifically set forth in this Agreement .

5.9 Amendments

This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the parties hereto.

5.10 Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

5.11 Notices

(a) **Method of Delivery.** Any notice, demand or other communication (in this Section, a "**notice**") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

(i) sent by electronic means of sending messages (in this Section, "**Electronic Transmission**"), by either facsimile transmission (if specified below) or e-mail, during normal business hours on a Business Day, but notice by Electronic Transmission shall only be sufficient if the notice includes or is accompanied by the sender's name and facsimile number or e-mail address as applicable, the date and time of transmission, and if sent by facsimile transmission the name and telephone number of a Person to contact in the event of facsimile transmission problems or if sent by e-mail acknowledgement that the transmission is transmitted to the sender by the recipient or the recipient's electronic system; or

(ii) delivered in person in a sealed package entitled Personal and Confidential addressed to the recipient during normal business hours on a Business Day and left with a receptionist or other responsible employee of the recipient, who is required to provide written acknowledgement of receipt, at the applicable address set forth below;

a. in the case of a notice to any Stockholder, to such Stockholder at the address indicated opposite to the name of the Stockholder in Appendix A; and

b. in the case of a notice to Gryphon, addressed to it at:

Gryphon Digital Mining, Inc.

[ADDRESS]
[CITY, STATE, ZIP]
Attention: [ ]

Email: [ ]

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

K&L Gates LLP
1 Park Plaza, Twelfth Floor
Irvine, CA 92614
Attention: Michael Hedge and Jason Dreibelbis
Email: michael.hedge@klgates.com;
jason.dreibelbis@klgates.com

(b) **Deemed Delivery.** Each notice sent in accordance with this Section shall be deemed to have been received:

(i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered; otherwise, on the first Business Day thereafter; or

(ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day and the electronic acknowledgement of delivery is received by the sender before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.

Any party hereto may change its address for notice by written notice delivered to the other parties hereto.

5.12 Specific Performance and other Equitable Rights

It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement will cause the other party to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity, and each Stockholder will waive, in any action for specific performance, interlocutory, preliminary and permanent injunctive relief and/or any other equitable relief, the defence of adequacy of a remedy at law and any requirement for the securing or posting of any bond in connection with the obtaining of any such relief.

5.13 Expenses

Each of the parties shall pay its respective legal, financial advisory and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed or prepared pursuant hereto and any other related costs and expenses whatsoever and howsoever incurred.

5.14 Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement.

To evidence the fact that a party hereto has executed this Agreement, such party may send a copy of its executed counterpart to the other parties hereto by Electronic Transmission and if sent by email, in Portable Document File (PDF) format. That party will be deemed to have executed this Agreement on the date it sent such Electronic Transmission.

5.15 Independent Legal Advice

Each Stockholder acknowledges that:

(a) the Stockholder has read this Agreement in its entirety, understands this Agreement and agrees to be bound by its terms and conditions;

(b) the Stockholder has been advised to seek independent legal advice with respect to the Stockholder executing and delivering this Agreement and has received such advice or has, without undue influence, elected to waive the benefit of any such advice; and

(c) the Stockholder is entering into this Agreement voluntarily.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

Jessica Billingsley

L. Dean Ditto

Ray Thompson

David McCullough

Scott Sozio

Matthew Kane

Tahira Rehmatullah

Barry Fishman

GRYPHON DIGITAL MINING, INC.

By:
Name:
Title:

[AKERNA LETTERHEAD]

RE: Voting and Support Agreement

Ladies and Gentlemen,

Reference is made to (i) that certain Securities Purchase Agreement, dated as of the date hereof (the "**SPA**"), among Akerna Corp., a Delaware corporation ("**KERN**"), Akerna Canada Ample Exchange Inc., an Ontario corporation ("**ExchangeCo**"), and POSaBIT Systems Corporation, a British Columbia corporation ("**POSaBIT**"), and (ii) that certain Exchange Agreement, dated as of the date hereof (the "**Exchange Agreement**"), by and among KERN and High Trail Investments ON LLC (the "**Holder**"). Capitalized terms not defined herein shall have the meaning as set forth in the Exchange Agreement.

Pursuant to the SPA and on the terms and subject to the conditions set forth therein, among other things, (i) POSaBIT or a Subsidiary of POSaBIT will acquire all of the issued and outstanding membership interests of MJ Freeway, LLC, a Colorado limited liability company, from KERN and (ii) POSaBIT will acquire all of the issued and outstanding common and preferred shares of Ample Organics Inc., an Ontario corporation, from ExchangeCo (collectively, the "**Purchase and Sale**").

Pursuant to the Exchange Agreement and on the terms and subject to the conditions set forth therein, among other things, the Holder and KERN have agreed to exchange the Exchange Note Amount for the New Preferred Shares (each as defined therein) (collectively, the "**Subject Securities**").

The Holder acknowledges and agrees that it will realize certain benefits in connection with the consummation of the Purchase and Sale and the other transactions contemplated in connection with the SPA (the "**Transactions**"), and desires to enter into this letter agreement (this "**Agreement**") to provide its support for completion of the Seller's Stockholder Matters on the terms and conditions set forth herein. The Holder also acknowledges that KERN, ExchangeCo and POSaBIT would not enter into the SPA but for the execution and delivery of this Agreement by the Holder. Accordingly, this Agreement sets out the terms and conditions of the agreement of the Holder to abide by the covenants in respect of the Subject Securities and the other restrictions and covenants set forth herein.

In consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows.

1. Definitions in SPA

All terms used in this Agreement that are not defined elsewhere in this Agreement and that are defined in the SPA shall have the respective meanings ascribed to them in the SPA.

2. Appendices

The following Appendices attached hereto constitute an integral part of this Agreement:

Appendix A	-	Exchange Agreement
Appendix B	-	SPA

3. Holder Support

In connection with the Seller's Stockholder Matters (and any other transactions contemplated in connection with the SPA), the Holder hereby covenants, undertakes and agrees from time to time, until such time as this Agreement is terminated in accordance with paragraph 8, to cause to be counted as present for purposes of establishing quorum and to vote (or cause to be voted) all of the New Preferred Shares: (i) at any meeting of any of the securityholders of KERN at which the Holder or any registered or beneficial owner of the New Preferred Shares are entitled to vote to obtain the Required Seller's Stockholder Vote; or (ii) in any action by written consent of the securityholders of KERN, in each case in favor of the Seller's Stockholder Matters.

4. Restrictions with Respect to Subject Securities

The Holder hereby covenants and agrees that, from the date hereof until the earlier of (i) the Final Closing and (ii) the termination of this Agreement in accordance with paragraph 8, except as permitted by this Agreement, the Holder will:

(a) not, directly or indirectly, option, sell, assign, transfer, pledge, encumber, grant a participation or security interest in or power of attorney over, hypothecate or otherwise convey or dispose of any Subject Securities, or any right or interest therein (legal or equitable), to any Person or group or Persons acting jointly or in concert or enter into any agreement, option or other arrangement to do any of the foregoing (each of the foregoing, a "**Transfer**"), other than to a corporation, partnership, limited liability company or other entity controlled solely by the Holder; provided, that a Transfer referred to in this sentence shall only be permitted if, as a precondition to such Transfer, the transferee agrees in writing, in form and substance reasonably acceptable to KERN, to be bound by all of the terms of this Agreement with respect to the Subject Securities; and provided further, that such entity shall remain solely controlled by the Holder until the earlier of: (i) the Final Closing; and (ii) the termination of this Agreement in accordance with paragraph 8. Any purported transfer of any Subject Securities or interest therein in violation of this paragraph 4(a) shall be null and void;

(b) not, directly or indirectly, grant or agree to grant any proxy or other right to vote any (i) New Preferred Shares, (ii) any other shares of KERN common stock or preferred stock ("**KERN Shares**") owned legally or beneficially by the Holder or any of its Affiliates as of the date of this Agreement, or over which the Holder or any of its Affiliates exercises direct or indirect control or discretion, or (iii) any KERN Shares with respect to which the Holder or any of its Affiliates acquires legal or beneficial ownership, or direct or indirect control or discretion, on or after the date of this Agreement (collectively, the "**KERN Voting Securities**"), except for any proxies granted to vote in favor of the Seller's Stockholder Matters in accordance with paragraph 5, or enter into any voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the stockholders of KERN or give consents or approval of any kind as to any KERN Voting Securities;

(c) not vote or cause to be voted any KERN Voting Securities in favor of, and vote or cause to be voted all KERN Voting Securities against, any Acquisition Proposal or any other proposed action, transaction or agreement by or involving KERN or any of its Affiliates or the Holder or any other Person that could reasonably be expected to prevent, hinder or delay the successful completion of the Purchase and Sale or any of the other Transactions;

(d) other than set forth herein, take all such steps as are necessary or advisable to ensure that at all relevant times its KERN Voting Securities will not be subject to any stockholders' agreements, voting trust or similar agreements or any option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming a stockholders' agreement, voting trust or other agreement affecting or restricting its ability to exercise all voting rights attaching to such KERN Voting Securities; and

(e) not withdraw, amend, modify or qualify, or publicly propose or state an intention to withdraw, amend, modify or qualify, support for the Seller's Stockholder Matters.

5. Voting of KERN Voting Securities

The Holder hereby agrees with KERN that it will, on or before any meeting of any of the securityholders of KERN in respect of any Seller's Stockholder Matter, duly complete forms of proxy in respect of all of its KERN Voting Securities, and any other required documents in connection therewith, and cause same to be validly delivered in support of (and indicating that all KERN Voting Securities are voted in favor of approving) the Seller's Stockholder Matters and will not withdraw the forms of proxy except as expressly otherwise provided in this Agreement.

6. Representations and Warranties of the Holder

The Holder hereby represents and warrants to and covenants with KERN as follows, and acknowledges that KERN is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. The Holder has all necessary power, authority, capacity and right to enter into this Agreement and to carry out each of its obligations under this Agreement. This Agreement has been duly executed and delivered by the Holder and, assuming due authorization, execution and delivery by KERN, constitutes a legal, valid and binding agreement enforceable by KERN against the Holder in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) Ownership of Subject Securities. The Holder is the direct beneficial owner of the Exchange Note Amount and, following consummation of the Initial Exchange in accordance with the terms and subject to the conditions set forth in the Exchange Agreement, will be the direct beneficial owner of the New Preferred Shares. Subject to any Transfer permitted pursuant to paragraph 4(a), the Holder will be continuously up until the Final Closing, the direct beneficial owner of the Exchange Note Amount (prior to the consummation of the Initial Exchange) and the New Preferred Shares (following consummation of the Initial Exchange), in each case with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands or rights of others of any nature or kind whatsoever. The Holder is not a party to, bound or affected by or subject to, any charter or by-law, contract, agreement provision, statute, regulation, judgment, order, decree or law which would be violated, contravened, breached by, or under which any default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.

(c) No Agreements. No Person has any agreement or option, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, for the purchase, acquisition or transfer of the Exchange Note Amount, or any interest therein or right thereto, except pursuant to this Agreement.

(d) Consents. No consent, waiver, approval, authorization, exemption, registration, licence or declaration of or by, or filing with, or notification to any Governmental Entity which has not been made or obtained is required to be made or obtained by the Holder in connection with (i) the execution and delivery by the Holder and enforcement against the Holder of this Agreement, or (ii) the consummation of any transactions by the Holder provided for herein.

(e) No Conflicts. None of the execution and delivery by the Holder of this Agreement or the compliance by the Holder with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of the Holder; (ii) any contract to which the Holder is a party or by which the Holder is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law.

(f) Legal Proceedings. There are no legal proceedings in progress or pending before any Governmental Entity or, to the knowledge of the Holder, threatened against the Holder or any of its Affiliates, or the Exchange Note Amount or other property of the Holder or any of its Affiliates, and there is no judgment, decree or order against the Holder or its Affiliates, or the Exchange Note Amount or other property of the Holder or any of its Affiliates, that would adversely affect in any manner the ability of the Holder to enter into this Agreement or adversely affect the Holder's ability to perform its obligations hereunder or the title of the Holder to the Exchange Note Amount.

(g) No Commitment. The Exchange Note Amount is not the subject of any commitment, undertaking or agreement, the terms of which would affect in any way the ability of the Holder to perform the Holder's obligations as set out in this Agreement.

7. Representations and Warranties of KERN

KERN hereby represents and warrants to the Holder as follows, and acknowledges that the Holder is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. KERN is a corporation duly incorporated and validly existing under the laws of Delaware and it has the requisite corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by KERN and constitutes a legal, valid and binding agreement enforceable by the Holder against KERN in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) No Conflicts. None of the execution and delivery by KERN of this Agreement or the compliance by KERN with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of KERN; (ii) any contract to which KERN is a party or by which KERN is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law, except in each case as would not reasonably be expected, either individually or in the aggregate, to materially impair the ability of KERN to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Purchase and Sale or any of the other Transactions.

(c) Legal Proceedings. There are no legal proceedings in progress or pending against or, to the knowledge of KERN, threatened against KERN or any of its Affiliates that would adversely affect in any manner the ability of KERN to enter into this Agreement and to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Purchase and Sale or any of the other Transactions.

8. Termination

This Agreement shall terminate: (a) by a written instrument executed by each of the parties; (b) in the event that the SPA is validly terminated in accordance with its terms; or (c) upon written notice by any party delivered to the other party at any time on or after September 30, 2023 or (d) at the Effective Time.

9. Effect of Termination

If this Agreement is terminated in accordance with paragraph 8, the provisions of this Agreement will become void in relation to the Holder and KERN and no such party shall have liability to such other party in respect of whom this Agreement has been terminated, except in respect of a willful, intentional or material breach of the representations, warranties, obligations, terms or conditions of this Agreement which occurred prior to such termination in which case the non-breaching party to this Agreement shall be entitled to pursue any and all remedies at law or equity which may be available to it.

10. Assignment

Subject to prior written notice to the Holder, KERN may assign all or part of its rights under this Agreement to an Affiliate of KERN. Other then as expressly contemplated by paragraph 4(a), this Agreement shall not be otherwise assignable by the Holder without the prior written consent of KERN, which consent may not be unreasonably withheld.

11. Time

Time shall be of the essence of this Agreement.

12. Governing Law

This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the State of Delaware and the federal laws of the United States applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Delaware with respect to any matter arising hereunder or related hereto. The parties to this Agreement hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the State of Delaware and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum. This paragraph 14 shall survive the termination of this Agreement.

13. Amendments

This Agreement may be amended, modified, or supplemented only by a written agreement signed by all of the parties hereto.

14. Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

15. Notices

(a) **Method of Delivery.** Any notice, demand or other communication (in this paragraph, a "**notice**") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

(i) sent by electronic means of sending messages (in this paragraph, "**Electronic Transmission**"), by either facsimile transmission (if specified below) or e-mail, during normal business hours on a Business Day, but notice by Electronic Transmission shall only be sufficient if the notice includes or is accompanied by the sender's name and facsimile number or e-mail address as applicable, the date and time of transmission, and if sent by facsimile transmission the name and telephone number of a Person to contact in the event of facsimile transmission problems or if sent by e-mail acknowledgement that the transmission is transmitted to the sender by the recipient or the recipient's electronic system; or

(ii) delivered in person in a sealed package entitled Personal and Confidential addressed to the recipient during normal business hours on a Business Day and left with a receptionist or other responsible employee of the recipient, who is required to provide written acknowledgement of receipt, at the applicable address set forth below;

a. in the case of a notice to the Holder, to the address indicated on the signature page hereto; and

b. in the case of a notice to KERN, addressed to it at:

Akerna Corp.

[ADDRESS]
[CITY, STATE, ZIP]
Attention: [ ]
Email: [ ]

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

Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, CO 80202
Attention: Jason Brenkert
Telephone: (303) 352-1133
E-mail: brenkert.jason@dorsey.com

(b) **Deemed Delivery.** Each notice sent in accordance with this paragraph shall be deemed to have been received:

(i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered; otherwise, on the first Business Day thereafter; or

(ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day and the electronic acknowledgement of delivery is received by the sender before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.

Any party hereto may change its address for notice by written notice delivered to the other parties hereto.

16. Specific Performance and other Equitable Rights

It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement will cause the other party to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity, and the Holder will waive, in any action for specific performance, interlocutory, preliminary and permanent injunctive relief and/or any other equitable relief, the defence of adequacy of a remedy at law and any requirement for the securing or posting of any bond in connection with the obtaining of any such relief.

17. Expenses

Except as otherwise provided in the Exchange Agreement, each of the parties shall pay its respective legal, financial advisory and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed or prepared pursuant hereto and any other related costs and expenses whatsoever and howsoever incurred.

18. Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement.

To evidence the fact that a party hereto has executed this Agreement, such party may send a copy of its executed counterpart to the other parties hereto by Electronic Transmission and if sent by email, in Portable Document File (PDF) format. That party will be deemed to have executed this Agreement on the date it sent such Electronic Transmission.

19. No Amendment, Modification or Waiver of Exchange Agreement. Nothing set forth in this Agreement shall amend, modify or waive any term or condition of the Exchange Agreement and in the event of any dispute between this Agreement and the Exchange Agreement, the terms and conditions of the Exchange Agreement shall govern and supersede such conflicting terms and conditions herein.

20. Independent Legal Advice

The Holder acknowledges that:

(a) the Holder has read this Agreement in its entirety, understands this Agreement and agrees to be bound by its terms and conditions;

(b) the Holder has been advised to seek independent legal advice with respect to the Holder executing and delivering this Agreement and has received such advice or has, without undue influence, elected to waive the benefit of any such advice; and

(c) the Holder is entering into this Agreement voluntarily.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

HOLDER:

By: _____
Name:
Title:

Address:

Wire Instructions:

AKERNA CORP.

By:
Name:
Title:

[AKERNA LETTERHEAD]

RE: Voting and Support Agreement

Ladies and Gentlemen,

Reference is made to (i) that certain Agreement and Plan of Merger, dated as of the date hereof (the "**Merger Agreement**"), by and among Akerna Corp., a Delaware corporation ("**KERN**"), Akerna Merger Co., a Delaware corporation and a wholly owned subsidiary of KERN ("**Merger Sub**") and Gryphon Digital Mining, Inc., a Delaware corporation ("**Gryphon**"), and (ii) that certain Exchange Agreement, dated as of the date hereof (the "**Exchange Agreement**"), by and among KERN and High Trail Investments ON LLC (the "**Holder**"). Capitalized terms not defined herein shall have the meaning as set forth in the Exchange Agreement.

Pursuant to the Merger Agreement and on the terms and subject to the conditions set forth therein, Merger Sub will merge with and into Gryphon (the "**Merger**"), with Gryphon continuing as the surviving corporation and a wholly owned subsidiary of KERN. Following the consummation of the Merger, the equityholders of Gryphon will own approximately 92.5% of the fully diluted capital stock of KERN.

In connection with the entry by Gryphon and KERN into the Merger Agreement, Gryphon, KERN and the Holder entered into the Exchange Agreement, pursuant to which, among other matters and on the terms and subject to the conditions set forth therein, the Holder and the Company have agreed to exchange the Exchange Note Amount for the New Preferred Shares (each as defined therein) (collectively, the "**Subject Securities**").

The Holder acknowledges and agrees that it will realize certain benefits in connection with the consummation of the Merger and the other Transactions, and desires to enter into this letter agreement (this "**Agreement**") to provide its support for completion of the Acquiror Stockholder Approval Matters on the terms and conditions set forth herein. The Holder also acknowledges that Gryphon and KERN would not enter into the Merger Agreement but for the execution and delivery of this Agreement by the Holder. Accordingly, this Agreement sets out the terms and conditions of the agreement of the Holder to abide by the covenants in respect of the Subject Securities and the other restrictions and covenants set forth herein.

In consideration of the premises and the covenants and agreements herein contained, the parties hereto agree as follows.

1. Definitions in Merger Agreement

All terms used in this Agreement that are not defined elsewhere in this Agreement and that are defined in the Merger Agreement shall have the respective meanings ascribed to them in the Merger Agreement.

2. Appendices

The following Appendices attached hereto constitute an integral part of this Agreement:

Appendix A	-	Exchange Agreement
Appendix B	-	Merger Agreement

3. Holder Support

In connection with the Acquiror Stockholder Approval Matters (and any other transactions contemplated in connection with the Merger Agreement), the Holder hereby covenants, undertakes and agrees from time to time, until such time as this Agreement is terminated in accordance with paragraph 8, to cause to be counted as present for purposes of establishing quorum and to vote (or cause to be voted) all of the New Preferred Shares: (i) at any meeting of any of the securityholders of KERN at which the Holder or any registered or beneficial owner of the New Preferred Shares are entitled to vote to obtain the Acquiror Stockholder Approval; or (ii) in any action by written consent of the securityholders of KERN, in favor of the Acquiror Stockholder Approval Matters.

4. Restrictions with Respect to Subject Securities

The Holder hereby covenants and agrees that, from the date hereof until the earlier of (i) the Effective Time and (ii) the termination of this Agreement in accordance with paragraph 8, except as permitted by this Agreement, the Holder will:

(a) not, directly or indirectly, option, sell, assign, transfer, pledge, encumber, grant a participation or security interest in or power of attorney over, hypothecate or otherwise convey or dispose of any Subject Securities, or any right or interest therein (legal or equitable), to any Person or group or Persons acting jointly or in concert or enter into any agreement, option or other arrangement to do any of the foregoing (each of the foregoing, a "**Transfer**"), other than to a corporation, partnership, limited liability company or other entity controlled solely by the Holder; provided, that a Transfer referred to in this sentence shall only be permitted if, as a precondition to such Transfer, the transferee agrees in writing, in form and substance reasonably acceptable to KERN, to be bound by all of the terms of this Agreement with respect to the Subject Securities; and provided further, that such entity shall remain solely controlled by the Holder until the earlier of: (i) the Effective Time; and (ii) the termination of this Agreement in accordance with paragraph 8. Any purported transfer of any Subject Securities or interest therein in violation of this paragraph 4(a) shall be null and void;

(b) not, directly or indirectly, grant or agree to grant any proxy or other right to vote any (i) New Preferred Shares, (ii) any other shares of KERN common stock or preferred stock ("**KERN Shares**") owned legally or beneficially by the Holder or any of its Affiliates as of the date of this Agreement, or over which the Holder or any of its Affiliates exercises direct or indirect control or discretion, or (iii) any KERN Shares with respect to which the Holder or any of its Affiliates acquires legal or beneficial ownership, or direct or indirect control or discretion, on or after the date of this Agreement (collectively, the "**KERN Voting Securities**"), except for any proxies granted to vote in favor of the Acquiror Stockholder Approval Matters in accordance with paragraph 5, or enter into any voting trust, vote pooling or other agreement with respect to the right to vote, call meetings of any of the stockholders of KERN or give consents or approval of any kind as to any KERN Voting Securities;

(c) not vote or cause to be voted any KERN Voting Securities in favor of, and vote or cause to be voted all KERN Voting Securities against, any Acquisition Proposal or any other proposed action, transaction or agreement by or involving KERN or any of its Affiliates or the Holder or any other Person that could reasonably be expected to prevent, hinder or delay the successful completion of the Merger or any of the other Transactions;

(d) other than set forth herein, take all such steps as are necessary or advisable to ensure that at all relevant times its KERN Voting Securities will not be subject to any stockholders' agreements, voting trust or similar agreements or any option, right or privilege (whether by law, pre-emptive or contractual) capable of becoming a stockholders' agreement, voting trust or other agreement affecting or restricting its ability to exercise all voting rights attaching to such KERN Voting Securities; and

(e) not withdraw, amend, modify or qualify, or publicly propose or state an intention to withdraw, amend, modify or qualify, support for the Acquiror Stockholder Approval Matters.

5. Voting of KERN Voting Securities

The Holder hereby agrees with KERN that it will, on or before any meeting of any of the securityholders of KERN in respect of any Acquiror Stockholder Approval Matter, duly complete forms of proxy in respect of all of its KERN Voting Securities, and any other required documents in connection therewith, and cause same to be validly delivered in support of (and indicating that all KERN Voting Securities are voted in favor of approving) the Acquiror Stockholder Approval Matters and will not withdraw the forms of proxy except as expressly otherwise provided in this Agreement.

6. Representations and Warranties of the Holder

The Holder hereby represents and warrants to and covenants with KERN as follows, and acknowledges that KERN is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. The Holder has all necessary power, authority, capacity and right to enter into this Agreement and to carry out each of its obligations under this Agreement. This Agreement has been duly executed and delivered by the Holder and, assuming due authorization, execution and delivery by KERN, constitutes a legal, valid and binding agreement enforceable by KERN against the Holder in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) Ownership of Subject Securities. The Holder is the direct beneficial owner of the Exchange Note Amount and, following consummation of the Initial Exchange in accordance with the terms and subject to the conditions set forth in the Exchange Agreement, will be the direct beneficial owner of the New Preferred Shares. Subject to any Transfer permitted pursuant to paragraph 4(a), the Holder will be continuously up until the Effective Time, the direct beneficial owner of the Exchange Note Amount (prior to the consummation of the Initial Exchange) and the New Preferred Shares (following consummation of the Initial Exchange), in each case with good and marketable title thereto, free and clear of any and all mortgages, liens, charges, restrictions, security interests, adverse claims, pledges, encumbrances and demands or rights of others of any nature or kind whatsoever. The Holder is not a party to, bound or affected by or subject to, any charter or by-law, contract, agreement provision, statute, regulation, judgment, order, decree or law which would be violated, contravened, breached by, or under which any default would occur as a result of, the execution and delivery of this Agreement or the consummation of any of the transactions provided for in this Agreement.

(c) No Agreements. No Person has any agreement or option, or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option, for the purchase, acquisition or transfer of the Exchange Note Amount, or any interest therein or right thereto, except pursuant to this Agreement.

(d) Consents. No consent, waiver, approval, authorization, exemption, registration, licence or declaration of or by, or filing with, or notification to any Governmental Entity which has not been made or obtained is required to be made or obtained by the Holder in connection with (i) the execution and delivery by the Holder and enforcement against the Holder of this Agreement, or (ii) the consummation of any transactions by the Holder provided for herein.

(e) No Conflicts. None of the execution and delivery by the Holder of this Agreement or the compliance by the Holder with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of the Holder; (ii) any contract to which the Holder is a party or by which the Holder is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law.

(f) Legal Proceedings. There are no legal proceedings in progress or pending before any Governmental Entity or, to the knowledge of the Holder, threatened against the Holder or any of its Affiliates, or the Exchange Note Amount or other property of the Holder or any of its Affiliates, and there is no judgment, decree or order against the Holder or its Affiliates, or the Exchange Note Amount or other property of the Holder or any of its Affiliates, that would adversely affect in any manner the ability of the Holder to enter into this Agreement or adversely affect the Holder's ability to perform its obligations hereunder or the title of the Holder to the Exchange Note Amount.

(g) No Commitment. The Exchange Note Amount is not the subject of any commitment, undertaking or agreement, the terms of which would affect in any way the ability of the Holder to perform the Holder's obligations as set out in this Agreement.

7. Representations and Warranties of KERN

KERN hereby represents and warrants to the Holder as follows, and acknowledges that the Holder is relying upon such representations, warranties and covenants in entering into this Agreement:

(a) Incorporation; Authorization. KERN is a corporation duly incorporated and validly existing under the laws of Delaware and it has the requisite corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by KERN and constitutes a legal, valid and binding agreement enforceable by the Holder against KERN in accordance with its terms, subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought.

(b) No Conflicts. None of the execution and delivery by KERN of this Agreement or the compliance by KERN with its obligations hereunder will violate, contravene, result in any breach of, or be in conflict with, or constitute a default under, or create a state of facts which after notice or lapse of time or both would constitute a default under, any term or provision of: (i) any organizational documents of KERN; (ii) any contract to which KERN is a party or by which KERN is bound; (iii) any judgment, decree, order or award of any Governmental Entity; or (iv) any applicable Law, except in each case as would not reasonably be expected, either individually or in the aggregate, to materially impair the ability of KERN to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Merger or any of the other Transactions.

(c) Legal Proceedings. There are no legal proceedings in progress or pending against or, to the knowledge of KERN, threatened against KERN or any of its Affiliates that would adversely affect in any manner the ability of KERN to enter into this Agreement and to perform its obligations hereunder or that would reasonably be expected to prevent or materially delay the completion of the Merger or any of the other Transactions.

8. Termination

This Agreement shall terminate: (a) by a written instrument executed by each of the parties; (b) in the event that the Merger Agreement is validly terminated in accordance with its terms; (c) upon written notice by any party delivered to the other party at any time on or after September 30, 2023 or (d) at the Effective Time.

9. Effect of Termination

If this Agreement is terminated in accordance with paragraph 8, the provisions of this Agreement will become void in relation to the Holder and KERN and no such party shall have liability to such other party in respect of whom this Agreement has been terminated, except in respect of a willful, intentional or material breach of the representations, warranties, obligations, terms or conditions of this Agreement which occurred prior to such termination in which case the non-breaching party to this Agreement shall be entitled to pursue any and all remedies at law or equity which may be available to it.

10. Assignment

Subject to prior written notice to the Holder, KERN may assign all or part of its rights under this Agreement to an Affiliate of KERN. Other then as expressly contemplated by paragraph 4(a), this Agreement shall not be otherwise assignable by the Holder without the prior written consent of KERN, which consent may not be unreasonably withheld.

11. Time

Time shall be of the essence of this Agreement.

12. Governing Law

This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the State of Delaware and the federal laws of the United States applicable therein. Each party hereto irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Delaware with respect to any matter arising hereunder or related hereto. The parties to this Agreement hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of the State of Delaware and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding so brought has been brought in an inconvenient forum. This paragraph 14 shall survive the termination of this Agreement.

13. Amendments

This Agreement may be amended, modified or supplemented only by a written agreement signed by all of the parties hereto.

14. Severability

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the terms of this Agreement remain as originally contemplated to the fullest extent possible.

15. Notices

(a) **Method of Delivery.** Any notice, demand or other communication (in this paragraph, a "**notice**") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

(i) sent by electronic means of sending messages (in this paragraph, "**Electronic Transmission**"), by either facsimile transmission (if specified below) or e-mail, during normal business hours on a Business Day, but notice by Electronic Transmission shall only be sufficient if the notice includes or is accompanied by the sender's name and facsimile number or e-mail address as applicable, the date and time of transmission, and if sent by facsimile transmission the name and telephone number of a Person to contact in the event of facsimile transmission problems or if sent by e-mail acknowledgement that the transmission is transmitted to the sender by the recipient or the recipient's electronic system; or

(ii) delivered in person in a sealed package entitled Personal and Confidential addressed to the recipient during normal business hours on a Business Day and left with a receptionist or other responsible employee of the recipient, who is required to provide written acknowledgement of receipt, at the applicable address set forth below;

a. in the case of a notice to the Holder, to the address indicated on the signature page hereto; and

b. in the case of a notice to KERN, addressed to it at:

Akerna Corp.
1550 Larimer Street, #246
Attention: Chief Exectuive Officer
Email: jlb@akerna.com

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

Dorsey & Whitney LLP
1400 Wewatta Street, Suite 400
Denver, CO 80202
Attention: Jason Brenkert
Telephone: (303) 352-1133
E-mail: brenkert.jason@dorsey.com

(b) **Deemed Delivery.** Each notice sent in accordance with this paragraph shall be deemed to have been received:

(i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered; otherwise, on the first Business Day thereafter; or

(ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day and the electronic acknowledgement of delivery is received by the sender before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.

Any party hereto may change its address for notice by written notice delivered to the other parties hereto.

16. Specific Performance and other Equitable Rights

It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement will cause the other party to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity, and the Holder will waive, in any action for specific performance, interlocutory, preliminary and permanent injunctive relief and/or any other equitable relief, the defence of adequacy of a remedy at law and any requirement for the securing or posting of any bond in connection with the obtaining of any such relief.

17. Expenses

Except as otherwise provided in the Exchange Agreement, each of the parties shall pay its respective legal, financial advisory and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed or prepared pursuant hereto and any other related costs and expenses whatsoever and howsoever incurred.

18. Counterparts

This Agreement may be executed in any number of counterparts. Each executed counterpart will be deemed to be an original. All executed counterparts taken together will constitute one agreement.

To evidence the fact that a party hereto has executed this Agreement, such party may send a copy of its executed counterpart to the other parties hereto by Electronic Transmission and if sent by email, in Portable Document File (PDF) format. That party will be deemed to have executed this Agreement on the date it sent such Electronic Transmission.

19. No Amendment, Modification or Waiver of Exchange Agreement. Nothing set forth in this Agreement shall amend, modify or waive any term or condition of the Exchange Agreement and in the event of any dispute between this Agreement the Exchange Agreement, the terms and conditions of the Exchange Agreement shall govern and supersede such conflicting terms and conditions herein.

20. Independent Legal Advice

The Holder acknowledges that:

(a) the Holder has read this Agreement in its entirety, understands this Agreement and agrees to be bound by its terms and conditions;

(b) the Holder has been advised to seek independent legal advice with respect to the Holder executing and delivering this Agreement and has received such advice or has, without undue influence, elected to waive the benefit of any such advice; and

(c) the Holder is entering into this Agreement voluntarily.

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

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

HOLDER:

By: _____
Name:
Title:

Address:

Wire Instructions:

AKERNA CORP.

By:
Name:
Title:

EXCHANGE AGREEMENT

This Exchange Agreement (the "**Agreement**") is entered into as of this 27th day of January, 2023, by and between Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Denver, Colorado 80202 (the "**Company**"), and the Holder signatory hereto (the "**Holder**"), with reference to the following facts:

A. Prior to the date hereof, pursuant to that certain Securities Purchase Agreement, dated as of October 5, 2021, by and between the Company and the investors party thereto (as amended, the "**Securities Purchase Agreement**"), the Company issued to such investors certain senior secured convertible notes (the "**Notes**"). Capitalized terms used but not otherwise defined herein shall have the meanings as set forth in the Securities Purchase Agreement (as amended hereby).

B. As of the date hereof, the Holder holds such aggregate principal amount of Notes as set forth on the signature page of the Holder attached hereto (the "**Existing Note**").

C. Concurrently with the execution and delivery of this Agreement, the Company, Gryphon Digital Mining, Inc. ("**Gryphon**") and Akerna Merger Co., a Delaware corporation ("**Merger Sub**"), are entering into an Agreement and Plan of Merger, in the form attached hereto as **Exhibit A** (the "**Merger Agreement**"), pursuant to which Merger Sub will merge with and into Gryphon (the "**Merger**"), with Gryphon surviving the Merger as a wholly owned subsidiary of the Company.

D. Pursuant to the Merger Agreement, following the consummation of the Merger, the equityholders of Gryphon will own approximately 92.5% of the fully diluted capital stock of the Company.

E. In connection with the entry by the Company and Gryphon into the Merger Agreement, the Company has authorized a new series of Preferred Stock of the Company designated as Series C Preferred Stock, $0.0001 par value, the terms of which are set forth in the certificate of designation for such series of Preferred Stock (the "**New Certificate of Designation**") in the form attached hereto as **Exhibit B** (together with any shares of Series C Preferred Stock issued in replacement thereof in accordance with the terms thereof, the "**Series C Preferred Stock**").

F. In connection with the completion of the Sale Transaction (as defined in the Merger Agreement) pursuant to that certain Securities Purchase Agreement by and among the Company, Akerna Canada Ample Exchange Co. and POSaBIT Systems Corporation dated the same date hereof (the "**SPA**"), at the Final Closing (as defined below) pursuant to one or more written releases in form and substance acceptable to the Company and the Holder (but only upon due execution and delivery of each such release in form and substance satisfactory to the parties thereto), the Company will require the Holder to consent to HT Investments MA LLC (the "**Collateral Agent**") releasing of its security interest in and to all the assets of the Company's subsidiary MJ Freeway, LLC (**"MJF**") and its pledge of the membership interests of MJF, under that certain Amended and Restated Security and Pledge Agreement dated October 5, 2021 by and between, among others, the Company, MJF and the Collateral Agent (the "**Security Agreement**") and that certain Amended and Restated Intellectual Property Security Agreement dated October 5, 2021 by and between, among others, the Company, MJF and the Collateral Agent (the "**Pledge Agreement**"), and release and terminate MJF from the guarantee by MJF of the obligations of the Company under the Notes, pursuant to that certain Amended and Restated Guaranty dated October 5, 2021 by and between, among others, MJF and the Collateral Agent (the "**Guaranty Agreement**" and, collectively with the Security Agreement and the Pledge Agreement, the "**Security Documents**") (collectively, the "**MJF Release**") and in connection with its completion of the Merger the Company will require the Holder to consent to the Collateral Agent releasing its security interest in and to all the remaining assets of the Company and the Company's pledge of the shares and membership interests of its subsidiaries under the Security Agreement and Pledge Agreement and release and terminate the Guaranty Agreement in relation to the Company's subsidiaries, other than MJF, that are a party thereto (the "**Merger Release**").

G. As a condition and material inducement to Gryphon's willingness to enter into the Merger Agreement and consummate the Merger, the Company and the Holder desire to, on the basis and subject to the terms and conditions set forth in this Agreement:

(a) subject to the conditions set forth in Section 1 below, including, without limitation, the Conversion Price (as defined in the Existing Note) having been adjusted downward to a conversion price as the parties mutually agree in writing, and as adjusted for stock splits, stock dividends, stock combinations, recapitalizations, and similar events) (the "**Conversion Price Adjustment**"), to exchange (the "**Initial Exchange**") up to such maximum aggregate Conversion Amount (as defined in the Existing Note) of the Existing Note as set forth on the signature page of the Holder attached hereto (the "**Maximum Note Amount**"), but in no event greater than the lesser of (x) the aggregate amount then outstanding under the Existing Note and (y) such portion of the Maximum Note Amount that is convertible, pursuant to the terms of the Existing Note (after giving effect to the Conversion Price Adjustment), into 19.9% of the Common Stock outstanding as of the date of consummation of the Initial Exchange (such lesser amount, the "**Exchange Note Amount**," and the aggregate number of shares of Common Stock then issuable upon conversion of the Exchange Note Amount immediately prior to giving effect to the Exchange, the "**Exchange Share Amount**") into such aggregate number of shares of Series C Preferred Stock (the "**New Preferred Shares**") with an aggregate voting power and economic value equal to the Exchange Share Amount;

(b) upon the consummation of any Subsequent Placement after the date hereof and prior to the time of consummation of the Merger (other than the consummation of the Merger itself), to apply no less than 50% of the gross proceeds from such Subsequent Placement to repay the aggregate amounts then outstanding under the Notes (until such time as no Notes remain outstanding), allocated pro rata to the holders of Notes then outstanding based upon the aggregate principal amount of Notes outstanding as of the time of such applicable Subsequent Placement (the "**Subsequent Placement Redemptions**");

(c) at the Final Closing , grant the MJF Release in such written form as is mutually acceptable to the Company and the Holder;

(d) on or prior to the Final Closing, if any Notes (excluding the Series C Preferred Stock) then remain outstanding, the Company shall consummate one or more Company Optional Redemptions (as defined in the Notes) pursuant to Section 9(a) of the Notes (as amended hereby), using the lesser of (A) the difference of (I) the sum of (x) all cash then held by the Company (or any of its Subsidiaries) and (y) any cash to be paid, directly or indirectly, to the Company (or any of its Subsidiaries) in connection with the transactions contemplated by the Merger Agreement and/or the SPA, as applicable, less (II) $500,000 and (B) an aggregate amount of cash equal to the Company Optional Redemption Price of the aggregate Conversion Amount (as defined in the Notes) of the Notes then outstanding (with each such Company Optional Redemption allocated pro rata to the holders of Notes then outstanding based upon the aggregate principal amount of Notes then outstanding) (the "**Cash Sweep**"); and

(e) at the Final Closing, grant the Merger Release in such written form as is mutually acceptable to the Company and the Holder;

(f) at the Final Closing, (i) if any portion of the Existing Note remains outstanding other than such portion of the applicable Company Optional Redemption Price of the Notes to be paid in cash pursuant to the Cash Sweep, to exchange the remaining Conversion Amount of the Existing Note into such aggregate number of shares of Common Stock (the "**New Note Exchange Shares**") equal to the quotient of (A) the applicable Company Optional Redemption Price of the remaining

Conversion Amount of the Existing Note then outstanding divided by (B) the lower of (x) the lowest VWAP of the Common Stock during the five (5) Trading Day period ending, and including, the Trading Day immediately prior to the Final Closing Date (as defined below) and (y) the Conversion Price (as defined in the Notes) in effect as of the Final Closing Date; and (ii) in accordance with the terms of the Series C Certificate of Designations, the Series C Preferred Stock shall be exchanged into the Change of Control Redemption/Exchange Consideration (as defined in the Series C Certificate of Designations) (with any shares of Common Stock included in such applicable Change of Control Redemption/Exchange Consideration, if any, the "**New Preferred Exchange Shares**", and together with the New Note Exchange Shares, the "**Final Closing Exchange Shares**"); provided, however, that to the extent that any issuances of Final Closing Exchange Shares to the Holder at the Final Closing in accordance herewith or pursuant to the Series C Certificate of Designations, as applicable would result in such Holder and its other Attribution Parties (as defined in the Existing Note) exceeding the Maximum Percentage (as defined in the Existing Note) (as calculated in accordance with Section 3(d)(i) of the Existing Note) (a "**Maximum Percentage Event**"), then such Holder shall not be entitled to receive such aggregate number of Final Closing Exchange Shares in excess of the Maximum Percentage (and shall not have beneficial ownership of such Final Closing Exchange Shares (or other equivalent security) as a result of the Final Closing (and beneficial ownership) to such extent of any such excess), such remaining portion of such Final Closing Exchange Shares that would have otherwise been issued to the Holder at the Final Closing (such remaining portion of Final Closing Exchange Shares, the "**Abeyance Shares**"), such portion of the Existing Note and/or shares of Series C Preferred Stock, as applicable, shall alternatively be exchanged for the right to receive such Abeyance Shares (with a beneficial ownership and issuance limitation substantially in the form of Section 3(d) of the Existing Note, *mutatis mutandis*), at such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such remaining portion of such Abeyance Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable (the exchanges contemplated by this clause (f) of paragraph G, collectively, the "**Final Exchange**", and, together with the Subsequent Placement Redemptions, the Initial Exchange and the Cash Sweep, the "**Transactions**").

H. The New Preferred Shares, the Final Closing Exchange Shares and this Agreement and such other documents and certificates related thereto are collectively referred to herein as the "**Exchange Documents.**"

I. The Exchange is being made in reliance upon the exemption from registration requirements of the Securities Act of 1933, as amended (the "**1933 Act**"), provided by Section 3(a)(9) promulgated thereunder.

NOW, **THEREFORE**, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the sufficiency of which is acknowledged by the parties, the parties hereto agree as follows:

1. **Waiver; Company Optional Redemptions; Subsequent Placement Redemption**. Effective as of the Effective Time (as defined below), the Company and the Holder each hereby waives, in part, the terms and conditions of Section 9(a) of the Notes such that, in connection with any Subsequent Placement Redemption and/or the Cash Sweep, as applicable, the Existing Note shall be subject to a Company Optional Redemption (as defined in the Existing Note) (for the avoidance off doubt, at the applicable Company Optional Redemption Price (as defined in the Existing Note) of the Conversion Amount subject to such Company Optional Redemption) without the requirement to satisfy any Equity Conditions (as defined in the Existing Note) and a Company Optional Redemption Date (as defined in the Existing Note) as of the date of consummation of such Subsequent Placement and/or the Cash Sweep, as applicable. The Company agrees, upon the consummation of any Subsequent Placement after the date hereof, to consummate Subsequent Placement Redemptions with respect thereto concurrently therewith and otherwise in accordance with the mechanics of such Company Optional Redemption as set forth in the Existing Note. Effective as of the Effective Time (as defined below), unless and until the Merger Agreement terminates prior to the consummation of the transactions contemplated thereunder, the Holder hereby waives, in part, the Available Cash Test (as defined in the Existing Note) in Section 14(r)(i) of the Existing Note and the Daily Available Cash Test (as defined in Section 4(ff) of the Securities Purchase Agreement), such that the Available Cash Test and the Daily Available Cash Test shall be deemed satisfied for the Holder if at least $1,308,157 is held in the Master Restricted Account of the Holder.

2. **Exchanges; Releases**.

2.1 **Initial Exchange**. On the Initial Closing Date (as defined below), subject to the terms and conditions of this Agreement, the Holder shall, and the Company shall, pursuant to Section 3(a)(9) of the 1933 Act, exchange the Exchange Note Amount for the New Preferred Shares.

2.2 **Final Exchange**. On the Final Closing Date (as defined below), subject to the terms and conditions of this Agreement and the Series C Certificate of Designations, as applicable, the Holder shall, and the Company shall, pursuant to Section 3(a)(9) of the 1933 Act, exchange (x) the remaining Existing Note then outstanding for the New Note Exchange Shares and (y) the New Preferred Shares then outstanding for the New Preferred Exchange Shares.

2.3 **Cash Sweep**. The Company agrees, on or prior to the time of consummation of the Final Closing Date, to consummate the Cash Sweep and wire the proceeds, by U.S. dollars and immediately available funds to the holders of Notes in accordance with the instructions of such holders of Notes delivered to the Company in writing (which may be one or more e-mails) on or prior to the Final Closing Date.

2.4 **Releases and Termination of Security Documents and Securities Purchase Agreement**. Subject to the conditions set forth in Section 4.1.2 below, including, without limitation, the consummation of the Final Exchange and the Cash Sweep, and the Company and the Holder mutually agreeing to a form of MJF Release and the Company, Gryphon and the Holder mutually agreeing to a form of Merger Release, on the Final Closing Date, the Holder will execute and deliver the MJF Release and the Merger Release to the Company and Gryphon, the Security Documents and the Securities Purchase Agreement shall terminate, the Existing Note and the shares of Series C Preferred Stock shall no longer be outstanding, and neither the Company nor the Holder shall have any further rights, obligations or liabilities thereunder other than as set forth in this Agreement.

3. **The Closings**.

3.1 **Initial Closing**. Subject to the conditions set forth in Section 4.1.1 below, the Initial Exchange shall take place via the electronic exchange of documents, securities and signatures, no later than two Business Days following the effectiveness of the Conversion Price Adjustment or at such other time and place as the Company and the Holder mutually agree (the "**Initial Closing**" and the "**Initial Closing Date**"); provided, that the Initial Closing shall take place no later than one Business Day prior to the record date for the meeting of the Company's stockholders to vote on the Merger Agreement and the other transactions contemplated thereby.

3.2 **Final Closing**. Subject to the conditions set forth in Section 4.1.2 below, the Final Exchange shall take place via the electronic exchange of documents, securities and signatures, at such time and place as the Company and the Holder mutually agree (the "**Final Closing**" and the "**Final Closing Date**"). The Initial Closing and the Final Closing are each referred to herein as a "**Closing**", and the Initial Closing Date and the Final Closing Date are each referred to herein as a "**Closing Date**".

4. **Closing Conditions to Each Closing**.

4.1 **Condition's to the Holder's Obligations at each Closing**

4.1.1 **Condition's to the Holder's Obligations at the Initial Closing** The obligation of the Holder to consummate the Initial Exchange is subject to the fulfillment (or waiver, at the sole option of the Holder), to the Holder's reasonable satisfaction, prior to or at the Initial Closing, of each of the following conditions:

4.1.1.1 **Representations and Warranties**. Each and every representation and warranty of the Company set forth herein shall be true and correct in all material respects (except where qualified by materiality or material adverse effect, which shall be true and correct in all respect) as of the date when made and as of the Initial Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Initial Closing Date. The Holder shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Initial Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Holder in the form acceptable to the Holder.

4.1.1.2 **Conversion Price Adjustment**. Prior to the Initial Closing, the Conversion Price Adjustment shall have occurred.

4.1.1.3 **New Certificate of Designations**. The New Certificate of Designations shall have been properly filed with the Secretary of State of Delaware and shall be in full force and effect. The Company shall have delivered to the Holder a certified copy of the Certificate of Incorporation (including the New Certificate of Designations) as certified by the Delaware Secretary of State within ten (10) days of the Initial Closing Date.

4.1.1.4 **Issuance of Securities**. At the Initial Closing, the Company shall issue the New Preferred Shares on the books and records of the Company.

4.1.1.5 **No Actions**. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

4.1.1.6 **Proceedings and Documents**. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Holder, and the Holder shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the Initial Exchange, including without limitation, those required by the Principal Market, if any.

4.1.1.7 **No Event of Default**. On each Trading Day during the twenty (20) Trading Days immediately preceding the Initial Closing Date and the Initial Closing Date, no Event of Default (as defined in the Existing Note) or event that with the passage of time or giving of notice would constitute an Event of Default shall have occurred (unless waived in writing by the Required Holders (as defined in the Existing Note)).

4.1.1.8 **Listing**. On each Trading Day during the twenty (20) Trading Days immediately preceding the Initial Closing Date and the Initial Closing Date, the Common Stock (I) shall be designated for quotation or listed on an Eligible Market and (II) shall not have been suspended.

4.1.1.9 **No Material Non-Public Information**. As of the Initial Closing Date, the Holder shall not be in possession of any material, nonpublic information received from Gryphon, the Company, any Subsidiary or its respective agents or Affiliates.

4.1.1.10 **Merger Agreement**. As of the Initial Closing Date, the Merger Agreement shall remain in full force and effect, shall not have been terminated by any Person and the conditions to the consummation of the Merger set forth therein shall be reasonably capable of being satisfied by the parties thereto (and the Company and Gryphon shall have no knowledge of any reason why any condition to Initial Closing therein would not be reasonably capable of being satisfied), as evidenced by a certificate executed by a duly authorized officer of each of the Company and Gryphon.

4.1.1.11 **Financing**. The Company will have completed a Subsequent Placement for at least $500,000 in aggregate gross proceeds within 30 calendar days of the Effective Time, or such other date as the Company and the Holder may mutually agree in writing and such Subsequent Placement will not include any offering of Excluded Securities (as defined in the Existing Notes).

4.1.2 **Condition's to the Holder's Obligations at the Final Closing** The obligation of the Holder to consummate the Final Exchange is subject to the fulfillment (or waiver, at the sole option of the Holder), to the Holder's reasonable satisfaction, prior to or at the Final Closing, of each of the following conditions:

4.1.2.1 **Representations and Warranties**. Each and every representation and warranty of the Company set forth herein shall be true and correct in all material respects (except where qualified by materiality or material adverse effect, which shall be true and correct in all respect) as of the date when made and as of the Final Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date) and the Company shall have performed, satisfied and complied in all respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Company at or prior to the Final Closing Date. The Holder shall have received a certificate, duly executed by the Chief Executive Officer of the Company, dated as of the Final Closing Date, to the foregoing effect and as to such other matters as may be reasonably requested by the Holder in the form acceptable to the Holder.

4.1.2.2 **Issuance of Securities**. At the Final Closing, the Company shall issue the Final Closing Exchange Shares on the books and records of the Company.

4.1.2.3 **No Actions**. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

4.1.2.4 **Proceedings and Documents**. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Holder, and the Holder shall have received all such counterpart originals or certified or other copies of such documents as they may reasonably request. The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the Final Exchange and the transactions contemplated by the Merger Agreement, including without limitation, those required by the Principal Market, if any.

4.1.2.5 **No Event of Default**. On each Trading Day during the twenty (20) Trading Days immediately preceding the Final Closing Date and the Final Closing Date, no Event of Default (as defined in the Existing Note) or event that with the passage of time or giving of notice would constitute an Event of Default shall have occurred (unless waived in writing by the Required Holders (as defined in the Existing Note)).

4.1.2.6 **Listing**. On each Trading Day during the twenty (20) Trading Days immediately preceding the Final Closing Date and the Final Closing Date, the Common Stock (I) shall be designated for quotation or listed on an Eligible Market and (II) shall not have been suspended.

4.1.2.7 **No Material Non-Public Information**. During the period commencing on the Initial Closing Date, through and including, the Final Closing Date, the Holder shall not be in possession of any material, nonpublic information received from Gryphon, the Company, any Subsidiary or its respective agents or Affiliates.

4.1.2.8 **Cash Sweep**. The Company shall have consummated the Cash Sweep in accordance with Section 2.3 above.

4.1.2.9 **Merger Agreement**. As of the Final Closing Date, the Merger Agreement shall remain in full force and effect, shall not have been terminated by any Person and the conditions to the consummation of the Merger set forth therein shall be satisfied in full (or waived) other than such actions that shall occur on the Final Closing Date at the time of consummation of the transactions contemplated by the Merger Agreement (all of which are reasonably capable of being satisfied by the parties thereto on the Final Closing Date (and the Company and Gryphon shall have no knowledge of any reason why any condition to the consummation of the transactions contemplated by the Merger Agreement would not be reasonably capable of being satisfied and consummated on the Final Closing Date), as evidenced by a certificate executed by a duly authorized officer of each of the Company and Gryphon.

4.2 **Condition's to the Company's Obligations to Each Closing**.

4.2.1 **Condition's to the Company's Obligations to the Initial Closing**. The obligation of the Company to consummate the Exchange is subject to the fulfillment (or waiver, at the sole option of the Company), to the Company's reasonable satisfaction, prior to or at the Initial Closing in question, of each of the following conditions:

4.2.1.1 **Representations and Warranties**. The representations and warranties of the Holder set forth herein shall be true and correct in all material respects as of the date when made and as of the Initial Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Holder shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Holder at or prior to the Initial Closing Date.

4.2.1.2 **Waiver**. Each Other Holder (as defined below) shall have duly executed and delivered to the Company an agreement in the form of this Agreement, which shall remain in full force and effect.

4.2.1.3 **No Actions**. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

4.2.1.4 **Proceedings and Documents**. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

4.2.2 **Condition's to the Company's Obligations to the Final Closing**. The obligation of the Company to consummate the Exchange is subject to the fulfillment (or waiver, at the sole option of the Company), to the Company's reasonable satisfaction, prior to or at the Final Closing in question, of each of the following conditions:

4.2.2.1 **Representations and Warranties**. The representations and warranties of the Holder set forth herein shall be true and correct in all material respects as of the date when made and as of the Final Closing Date as though originally made at that time (except for representations and warranties that speak as of a specific date, which shall be true and correct as of such specific date), and the Holder shall have performed, satisfied and complied in all material respects with the covenants, agreements and conditions required by this Agreement to be performed, satisfied or complied with by the Holder at or prior to the Final Closing Date.

4.2.2.2 **Waiver**. Each Other Holder (as defined below) shall have duly executed and delivered to the Company an agreement in the form of this Agreement, which shall remain in full force and effect.

4.2.2.3 **No Actions**. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or authority or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, this Agreement or the consummation of the transactions contemplated by this Agreement.

4.2.2.4 **Proceedings and Documents**. All proceedings in connection with the transactions contemplated hereby and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the Company and the Company shall have received all such counterpart originals or certified or other copies of such documents as the Company may reasonably request.

4.2.2.5 **Releases**. The Holder and each Other Holder shall have executed and delivered the MJF Release and the Merger Release to the Company and Gryphon.

5. **Delivery of Securities; Payment; Effective Time**.

5.1 **Delivery of Securities**

5.1.1 **Delivery of Securities at Initial Closing**. Within five (5) Trading Days after the Initial Closing Date, the Company shall deliver the New Preferred Shares in certificate or book entry form to the Holder. Notwithstanding the foregoing, as of the Initial Closing Date, the Holder shall be deemed for all corporate purposes to have become the holder of record of the New Preferred Shares and shall be entitled to exercise all of its rights with respect to the New Preferred Shares and, irrespective of the date the Company delivers such certificate evidencing the New Preferred Shares (or evidence of book entry issuance, as applicable).

5.1.2 **Delivery of Securities at Final Closing**. On the Final Closing Date, the Company shall deliver the Final Closing Exchange Shares to the Holder by deposit/withdrawal at custodian in accordance with the DWAC instructions delivered to the Company in writing on or prior to the Final Closing Date (which writing may be an e-mail), which Final Closing Exchange Shares shall be issued without a securities laws restrictive legend and shall be freely tradable by the Holder. Notwithstanding the foregoing, as of the Final Closing Date, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Final Closing Exchange Shares and shall be entitled to exercise all of its rights with respect to the Final Closing Exchange Shares and, irrespective of the date the Company delivers such Final Closing Exchange Shares.

5.2 **Payment**. On or prior to the Effective Time, the Company shall pay (the "**Payment**"), in U.S. dollars and immediately available funds, the Legal Fee Amount (as defined below) to Kelley Drye & Warren LLP.

5.3 **Effective Time**. This Agreement shall be deemed to be effective (the "**Effective Time**") upon the later of (i) the time of full execution and delivery by the parties hereto of this Agreement and the other Exchange Documents, and (ii) the time of receipt of the Payment (unless the Holder elects by written notice to the Company, which may be an e-mail, to permit the Effective Time to occur prior to the Payment).

6. **Ratifications; Incorporation of Terms under Transaction Documents**.

6.1 **Ratifications**. Except as otherwise expressly provided herein, the Securities Purchase Agreement, and each other Transaction Document, is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the date hereof: (i) all references in the Securities Purchase Agreement to "this Agreement," "hereto," "hereof," "hereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement, and (ii) all references in the other Transaction Documents to the "Securities Purchase Agreement," "thereto," "thereof," "thereunder" or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement and the Exchange Documents.

6.2 **Amendments and Incorporation of Terms under Transaction Documents**. Effective as of the Effective Time, the Securities Purchase Agreement and each of the other Transaction Documents are hereby amended as follows (and any such agreements, covenants and related provisions therein shall be deemed incorporated by reference herein, mutatis mutandis, as amended as such):

6.2.1 The defined term "**Notes**" is hereby amended to include the New Preferred Shares (as defined herein).

6.2.2 The defined term "**Conversion Shares**" is hereby amended to include the Final Closing Exchange Shares.

6.2.3 The defined term "**Transaction Documents**" is hereby amended to include this Agreement and the Exchange Documents and the New Certificate of Designation.

7. **Representations and Warranties**. Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, the Company represents and warrants to the Holder that the statements contained in this Section 7 are true and correct as of the date hereof and will be at each of the Effective Time, the Initial Closing Date and the Final Closing Date:

7.1 **Organization and Qualification**. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect (as defined below). As used in this Agreement, "**Material Adverse Effect**" means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary, individually or taken as a whole, (ii) the transactions contemplated hereby or in any of the other Exchange Documents and/or the Merger Agreement or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Exchange Documents (as defined below) and/or the Merger Agreement. Other than the Persons (as defined below) listed in the SEC Documents (as defined in Section 7.8 below) and Merger Sub, the Company has no Subsidiaries. "**Subsidiaries**" means any Person in which the Company, directly or indirectly, (I) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (II) controls or operates all or any part of the business, operations or administration of such Person, and each of the foregoing, is individually referred to herein as a "**Subsidiary**." For purposes of this Agreement, (x) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any Governmental Entity or any department or agency thereof and (y) "**Governmental Entity**" means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

7.2 **Authorization and Binding Obligation**. The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement and each of the other agreements entered into by the parties hereto in connection with the transactions contemplated by the Exchange Documents and to consummate the Transactions (including, without limitation, the issuance of the New Preferred Shares in accordance with the terms hereof and the reservation for issuance and issuance of the Final Closing Exchange Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable). The execution and delivery of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the New Preferred Shares in accordance with the terms hereof and the reservation for issuance and issuance of the Final Closing Exchange Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable, has been duly authorized by the Company's

Board of Directors and no further filing, consent, or authorization is required by the Company, its Board of Directors or its stockholders. This Agreement and the other Exchange Documents have been duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

7.3 **No Conflict**. The execution, delivery and performance of the Exchange Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including, without limitation, the issuance of the New Preferred Shares in accordance with the terms hereof and the reservation for issuance and issuance of the Final Closing Exchange Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable) will not (i) result in a violation of the Certificate of Incorporation (as defined below) or any other organizational documents of the Company or any of its Subsidiaries, any capital stock of the Company or any of its Subsidiaries or Bylaws (as defined below) of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) to the Knowledge of the Company, result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and the rules and regulations of the Nasdaq Capital Market (the "**Principal Market**") and including all applicable federal laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected. For purposes of this Agreement, the term "**Knowledge of the Company**" or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of the Company, after due inquiry.

7.4 **No Consents**. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with the Securities and Exchange Commission (the "**SEC**") or state securities agencies, any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by this Agreement and the Exchange Documents, in each case, in accordance with the terms hereof or thereof. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been obtained or effected on or prior to the date hereof, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Exchange Documents. Except as disclosed in the SEC Documents (as defined in Section 7.8 below), the Company is not in violation of the requirements of the Principal Market and has no knowledge of any facts or circumstances which would reasonably lead to delisting or suspension of the Common Stock in the foreseeable future.

7.5 **Securities Law Exemptions**. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the New Preferred Shares and the Final Closing Exchange Shares in accordance herewith and/or pursuant to the Series C Certificate of Designations, as applicable is exempt from registration under the 1933 Act pursuant to the exemption provided by Rule 3(a)(9) thereof. The Company acknowledges and agrees that no cash consideration shall be paid, or be required to be paid, directly, or indirectly, by the Holder to the Company in connection with any of the Transactions.

7.6 **Issuance of New Preferred Shares and Final Closing Exchange Shares**. The issuance of the New Preferred Shares are duly authorized and, upon issuance in accordance with the terms of this Agreement, the New Preferred Shares shall be validly issued, fully paid and non-assessable and free from all preemptive or similar rights, mortgages, defects, claims, liens, pledges, charges, taxes, rights of first refusal, encumbrances, security interests and other encumbrances (collectively "**Encumbrances**") with respect to the issue thereof. The Company has reserved a sufficient number of Common Stock issuable in the Final Exchange to consummate the Final Exchange in accordance herewith (and/or pursuant to the Series C Certificate of Designations, as applicable), and when the Final Closing Exchange Shares are issued accordance herewith (and/or pursuant to the Series C Certificate of Designations, as applicable), the Final Closing Exchange Shares, when issued, will be validly issued, fully paid and nonassessable and free from all preemptive or similar rights or Encumbrances with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock.

7.7 **Transfer Taxes**. On the date hereof, all share transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance of the New Preferred Shares and the Final Closing Exchange Shares to be exchanged with the Holder hereunder (and/or pursuant to the Series C Certificate of Designations, as applicable) will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

7.8 **SEC Documents; Financial Statements**. As of the Effective Time, the Company has met all of its filing requirements of periodic reports under Section 13 or Section 15(d) of Securities Exchange Act of 1934, as amended (the "**1934 Act**") (all of the foregoing filed prior to the date hereof, including without limitation, Current Reports on Form 8-K filed by the Company with the SEC whether required to be filed or not (but excluding Item 7.01 thereunder), and all exhibits and appendices included therein (other than Exhibits 99.1 to Form 8-K) and financial statements, notes and schedules thereto and documents incorporated by reference therein being hereinafter referred to as the "**SEC Documents**"). Upon request by the Holder, the Company has delivered or has made available to the Holder or its representatives true, correct and complete copies of each of the SEC Documents not available on the EDGAR system. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of their respective dates, the financial statements of the Company included in the SEC Documents complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing. Such financial statements have been prepared in accordance with generally accepted accounting principles ("**GAAP**"), consistently applied, during the periods involved (except (i) as may be otherwise indicated in such financial statements or the notes thereto, or (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate). No other information provided by or on behalf of the Company to the Holder which is not included in the SEC Documents (including, without limitation, information in the disclosure schedules to this Agreement) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein not misleading, in the light of the circumstance under which they are or were made. The Company is not currently contemplating to amend or restate any of the financial statements (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "**Financial Statements**"), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in compliance with GAAP and the rules and regulations of the SEC. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the Financial Statements or that there is any need for the Company to amend or restate any of the Financial Statements.

7.9 **Absence of Certain Changes**. Except as set forth in the SEC Documents, since the date of the Company's most recent audited financial statements contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, there has been no material adverse change and no material adverse development in the business, assets, liabilities, properties, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any of its Subsidiaries, provided that the parties agree that the execution of the SPA and the Merger Agreement do not constitute a material adverse change or material adverse development. Except as set forth in the SEC Documents, since the date of the Company's most recent audited financial statements contained in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021, neither the Company nor any of its Subsidiaries has (i) declared or paid any dividends, (ii) sold any assets, individually or in the aggregate, outside of the ordinary course of business or (iii) made any capital expenditures, individually or in the aggregate, outside of the ordinary course of business. Neither the Company nor any of its Subsidiaries has taken any steps to seek protection pursuant to any law or statute relating to bankruptcy, insolvency, reorganization, receivership, liquidation or winding up, nor does the Company or any Subsidiary have any knowledge or reason to believe that any of their respective creditors intend to initiate involuntary bankruptcy proceedings or any actual knowledge of any fact which would reasonably lead a creditor to do so.

7.10 **No Undisclosed Events, Liabilities, Developments or Circumstances**. Except as set forth in the SEC Documents, no event, liability, development or circumstance has occurred or exists, or is reasonably expected to exist or occur with respect to the Company, any of its Subsidiaries or any of their respective businesses, properties, liabilities, prospects, operations (including results thereof) or condition (financial or otherwise), that (i) would be required to be disclosed by the Company under applicable securities laws on a registration statement on Form S-1 filed with the SEC relating to an issuance and sale by the Company of its Common Stock and which has not been publicly announced, (ii) would reasonably expected to have a material adverse effect on the Holder's investment hereunder or (iii) would reasonably be expected to have a Material Adverse Effect on the Company .

7.11 **Conduct of Business; Regulatory Permits**. Neither the Company nor any of its Subsidiaries is in violation of any term of or in default under its Certificate of Incorporation, any certificate of designation, preferences or rights of any other outstanding series of Preferred Stock of the Company or any of its Subsidiaries or Bylaws or their organizational charter, certificate of formation, memorandum of association, articles of association, Certificate of Incorporation or bylaws, respectively. Except as set forth in the SEC Documents, neither the Company nor any of its Subsidiaries is in violation of any judgment, decree or order or any statute, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries will conduct its business in violation of any of the foregoing, except in all cases for possible violations which could not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth in the SEC Documents, without limiting the generality of the foregoing, the Company is not in violation of any of the rules, regulations or requirements of the Principal Market and has no knowledge of any facts or circumstances that could reasonably lead to delisting or suspension of the Common Stock by the Principal Market in the foreseeable future. Except as set forth in the SEC Documents, during the two years prior to the date hereof, (i) the Common Stock has been listed or designated for quotation on the Principal Market, (ii) trading in the Common Stock has not been suspended by the SEC or the Principal Market and (iii) the Company has received no communication, written or oral, from the SEC or the Principal Market regarding the suspension or delisting of the Common Stock from the Principal Market. The Company and each of its Subsidiaries possess all certificates, authorizations and permits issued by the appropriate regulatory authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations or permits would not have, individually or in the aggregate, a Material Adverse Effect, and neither the Company nor any such Subsidiary has received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit. There is no agreement, commitment, judgment, injunction, order or decree binding upon the Company or any of its Subsidiaries or to which the Company or any of its Subsidiaries is a party which has or would reasonably be expected to have the effect of prohibiting or materially impairing any business practice of the Company or any of its Subsidiaries, any acquisition of property by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries as currently conducted other than such effects, individually or in the aggregate, which have not had and would not reasonably be expected to have a Material Adverse Effect on the Company or any of its Subsidiaries.

7.12 **Transactions With Affiliates**. Except as set forth in the SEC Documents, no current or former employee, partner, director, officer or stockholder (direct or indirect) of the Company or its Subsidiaries, or any associate, or, to the knowledge of the Company, any affiliate of any thereof, or any relative with a relationship no more remote than first cousin of any of the foregoing, is presently, or has ever been, (i) a party to any transaction with the Company or its Subsidiaries (including any contract, agreement or other arrangement providing for the furnishing of services by, or rental of real or personal property from, or otherwise requiring payments to, any such director, officer or stockholder or such associate or affiliate or relative Subsidiaries (other than for ordinary course services as employees, consultants, officers or directors of the Company or any of its Subsidiaries)) or (ii) the direct or indirect owner of an interest in any corporation, firm, association or business organization which is a competitor, supplier or customer of the Company or its Subsidiaries (except for a passive investment (direct or indirect) in less than 5% of the common stock of a company whose securities are traded on or quoted through an Eligible Market), nor does any such Person receive income from any source other than the Company or its Subsidiaries which relates to the business of the Company or its Subsidiaries or should properly accrue to the Company or its Subsidiaries. Except as set forth in the SEC Documents, no employee, officer, stockholder or director of the Company or any of its Subsidiaries or member of his or her immediate family is indebted to the Company or its Subsidiaries, as the case may be, nor is the Company or any of its Subsidiaries indebted (or committed to make loans or extend or guarantee credit) to any of them, other than (i) for payment of salary for services rendered, (ii) reimbursement for reasonable expenses incurred on behalf of the Company, and (iii) for other standard employee benefits made generally available to all employees or executives (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company).

7.13 **Equity Capitalization**.

7.13.1 **Definitions**:

7.13.1.1 "**Common Stock**" means (x) the Company's shares of common stock, $0.0001 par value per share, and (y) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such Common Stock.

7.13.1.2 **"Preferred Stock"** means (x) the Company's blank check preferred stock, $0.0001 par value per share, the terms of which may be designated by the board of directors of the Company in a certificate of designation and (y) any capital stock into which such Preferred Stock shall have been changed or any share capital resulting from a reclassification of such Preferred Stock (other than a conversion of such preferred stock into Common Stock in accordance with the terms of such certificate of designations).

7.13.2 **Authorized and Outstanding Capital Stock**. As of the date hereof, the authorized capital stock of the Company consists of (A)150,000,000 shares of Common Stock, of which, 4,602,780 are issued and outstanding as of the date hereof and 5,686,642 are reserved for issuance pursuant to Convertible

Securities (as defined below), in each case exercisable or exchangeable for, or convertible into, shares of Common Stock, and (B) 5,000,000 shares of Preferred Stock, of which (i) 400,000 have been designated as Series A Preferred Stock of which none are issued and outstanding; and, (ii) 100,000 have been designated as Series B Preferred Stock of which none are issued and outstanding, and (iii) one (1) has been designated as Special Voting Preferred Stock of which one (1) is issued and outstandingly. No shares of Common Stock are held in the treasury of the Company. "Convertible Securities" means any capital stock or other security of the Company or any of its Subsidiaries that is at any time and under any circumstances directly or indirectly convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any capital stock or other security of the Company (including, without limitation, Common Stock) or any of its Subsidiaries.

7.13.3 **Valid Issuance; Available Shares; Affiliates** . All of such outstanding shares of Common Stock are duly authorized and have been, or upon issuance will be, validly issued and are fully paid and nonassessable. The SEC Documents set forth the number of shares of Common Stock that are (A) reserved for issuance pursuant to Convertible Securities and (B) that are, as of the date hereof, owned by Persons who are "affiliates" (as defined in Rule 405 of the 1933 Act and calculated based on the assumption that only officers, directors and holders of at least 10% of the Company's issued and outstanding Common Stock are "affiliates" without conceding that any such Persons are "affiliates" for purposes of federal securities laws) of the Company or any of its Subsidiaries.

7.13.4 **Existing Note; Obligations**. Except as disclosed in the SEC Documents: (A) none of the Company's or any Subsidiary's shares, interests or capital stock is subject to any Encumbrances; (B) there are no outstanding options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries, or contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to issue additional shares, interests or capital stock of the Company or any of its Subsidiaries or options, warrants, scrip, rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities or rights convertible into, or exercisable or exchangeable for, any shares, interests or capital stock of the Company or any of its Subsidiaries; (C) there are no agreements or arrangements under which the Company or any of its Subsidiaries is obligated to register the sale of any of their securities under the 1933 Act; (D) there are no outstanding securities or instruments of the Company or any of its Subsidiaries which contain any redemption or similar provisions, and there are no contracts, commitments, understandings or arrangements by which the Company or any of its Subsidiaries is or may become bound to redeem a security of the Company or any of its Subsidiaries; (E) there are no securities or instruments containing anti-dilution or similar provisions that will be triggered by the issuance of the New Preferred Shares or the Final Closing Exchange Shares; and (F) neither the Company nor any Subsidiary has any stock appreciation rights or "phantom stock" plans or agreements or any similar plan or agreement. Any shares of Common Stock issued (or issuable) upon conversion of the Existing Note on or prior to the Final Closing Date shall be freely tradeable, issued without restrictive legends and delivered to the Holder in accordance with the terms of the Transaction Documents.

7.13.5 **Organizational Documents**. The Company has furnished or has made available to the to the Holder by filing on the SEC EDGAR system true, correct and complete copies of the Company's Certificate of Incorporation, as amended and as in effect on the date hereof (the "**Certificate of Incorporation**"), and the Company's bylaws, as amended and as in effect on the date hereof (the "Bylaws"), and the terms of all Convertible Securities and the material rights of the holders thereof in respect thereto.

7.14 **Indebtedness and Other Contracts**. Neither the Company nor any of its Subsidiaries, (i) except as disclosed in the SEC Documents, has any outstanding debt securities, notes, credit agreements, credit facilities or other agreements, documents or instruments evidencing Indebtedness of the Company or any of its Subsidiaries or by which the Company or any of its Subsidiaries is or may become bound, (ii) is a party to any contract, agreement or instrument, except as disclosed in the SEC Documents, the violation of which, or default under which, by the other party(ies) to such contract, agreement or instrument could reasonably be expected to result in a Material Adverse Effect, (iii) has any financing statements securing obligations in any amounts filed in connection with the Company or any of its Subsidiaries, except as disclosed in the SEC Documents; (iv) is in violation of any term of, or in default under, any contract, agreement or instrument relating to any Indebtedness, except where such violations and defaults would not result, individually or in the aggregate, in a Material Adverse Effect, or (v) is a party to any contract, agreement or instrument relating to any Indebtedness, the performance of which, in the judgment of the Company's officers, has or is expected to have a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have any liabilities or obligations required to be disclosed in the SEC Documents which are not so disclosed in the SEC Documents, other than those incurred in the ordinary course of the Company's or its Subsidiaries' respective businesses and which, individually or in the aggregate, do not or could not have a Material Adverse Effect.

7.15 **Litigation**. Except as otherwise disclosed by the Company in its SEC Documents or as set forth on Schedule 7.15 hereto,, there is no action, suit, arbitration, proceeding, inquiry or investigation before or by the Principal Market, any court, public board, other Governmental Entity, self-regulatory organization or body pending or, to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, the Common Stock or any of the Company's or its Subsidiaries' officers or directors that would reasonably be expected to have a Material Adverse Effect on the Company or its Subsidiaries, whether of a civil or criminal nature or otherwise, in their capacities as such. No director, officer or employee of the Company or any of its Subsidiaries has willfully violated 18 U.S.C. §1519 or engaged in spoliation in reasonable anticipation of litigation. Without limitation of the foregoing, there has not been, and to the Knowledge of the Company, there is not pending or contemplated, any investigation by the SEC involving the Company, any of its Subsidiaries or any current or former director or officer of the Company or any of its Subsidiaries. The SEC has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the 1933 Act or the 1934 Act. Neither the Company nor any of its Subsidiaries is subject to any order, writ, judgment, injunction, decree, determination or award of any Governmental Entity.

7.16 **Disclosure**. The Company confirms that neither it nor any other Person acting on its behalf has provided the Holder or its agents or counsel with any information that constitutes or would reasonably be expected to constitute material, non-public information concerning the Company or any of its Subsidiaries, other than the existence of the transactions contemplated by this Agreement and the other Exchange Documents. The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in securities of the Company. All disclosure provided to the Holder regarding the Company and its Subsidiaries, their businesses and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company or any of its Subsidiaries is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Each press release issued by the Company or any of its Subsidiaries during the twelve (12) months preceding the date of this Agreement did not at the time of release contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, liabilities, prospects, operations (including results thereof) or conditions (financial or otherwise), which, under applicable law, rule or regulation, requires public disclosure at or before the date hereof or announcement by the Company but which has not been so publicly announced or disclosed.

8. **Holder's Representations and Warranties**. As a material inducement to the Company to enter into this Agreement and consummate the Transactions, the Holder represents, warrants and covenants with and to the Company as of the date hereof and each of the Effective Time, the Initial Closing Date and the Final Closing Date, as follows:

8.1 **Reliance on Exemptions**. The Holder understands that the New Preferred Shares and the Final Closing Exchange Shares are being offered and exchanged in reliance on specific exemptions from the registration requirements of United States federal and state securities laws and that the Company is relying in part 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 and in the Exchange Documents in order to determine the availability of such exemptions and the eligibility of the Holder to acquire the New Preferred Shares and the Final Closing Exchange Shares.

8.2 **No Governmental Review**. The Holder understands that no United States federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the New Preferred Shares or the Final Closing Exchange Shares or the fairness or suitability of the investment in the New Preferred Shares or the Final Closing Exchange Shares nor have such authorities passed upon or endorsed the merits of the offering of the New Preferred Shares or the Final Closing Exchange Shares.

8.3 **Validity; Enforcement**. This Agreement and the Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

8.4 **No Conflicts**. The execution, delivery and performance by the Holder of this Agreement and the Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

8.5 **Ownership of Existing Note**. The Holder owns the Existing Note free and clear of any Encumbrances (other than the obligations pursuant to this Agreement and applicable securities laws).

9. **Disclosure of Transaction**. The Company shall, on or before 8:30 a.m., New York City time, on or prior to the first Business Day after the date of this Agreement, file a Current Report on Form 8-K describing the terms of the transactions contemplated hereby in the form required by the 1934 Act and attaching this Agreement and the New Certificate of Designation as exhibits to such filing (excluding schedules, the "**8-K Filing**"). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided up to such time to the Holder by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement with respect to the transactions contemplated by the Exchange Documents or as otherwise disclosed in the 8-K Filing, 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 any of the Holder or any of their affiliates, on the other hand, shall terminate. Neither the Company, its Subsidiaries nor the Holder shall issue any press releases or any other public statements with respect to the transactions contemplated hereby; *provided, however,* the Company shall be entitled, without the prior approval of the Holder, to issue a press release or make such other public disclosure with respect to such transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith or (ii) as is required by applicable law and regulations (provided that in the case of clause (i) the Holder shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release). For the avoidance of doubt, the foregoing sentence shall not apply to any press release or other public statement solely with respect to the Merger Agreement, the SPA and the transactions contemplated thereby and without any reference to the Holder or this Agreement. Without the prior written consent of the Holder (which may be granted or withheld in the Holder's sole discretion), except as required by applicable law, the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of the Holder in any filing, announcement, release or otherwise. Notwithstanding anything contained in this Agreement to the contrary and without implication that the contrary would otherwise be true, the Company expressly acknowledges and agrees that the Holder shall not have (unless expressly agreed to by the Holder after the date hereof in a written definitive and binding agreement executed by the Company and the Holder (it being understood and agreed that no Other Holder may bind the Holder with respect thereto)), any duty of confidentiality with respect to, or a duty not to trade on the basis of, any material, non-public information regarding the Company or any of its Subsidiaries.

10. **Fees**. The Company shall reimburse Kelley Drye & Warren, LLP (counsel to the lead Holder) in an aggregate non-accountable amount of $150,000 (the "**Legal Fee Amount**") for costs and expenses incurred by it in connection with drafting and negotiation of the Exchange Documents; provided, that the Company shall promptly reimburse Kelley Drye & Warren LLP on demand for any additional reasonable and documented fees and expenses not so reimbursed through such withholding at each Closing. Each party to this Agreement shall bear its own expenses in connection with the structuring, documentation, negotiation and closing of the transactions contemplated hereby, except as provided in the previous sentence, and except that the Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, transfer agent fees, Depository Trust Company ("**DTC**") fees relating to or arising out of the transactions contemplated hereby.

11. **Holding Period**. For the purposes of Rule 144, the Company acknowledges that (i) the holding period of the New Preferred Shares shall be tacked onto the holding period of the Existing Note, (ii) the holding period of the New Preferred Exchange Shares, if any, shall be tacked onto the holding period of the Existing Note and the New Preferred Shares, and (iii) the holding period of the New Note Exchange Shares, if any, shall be tacked onto the holding period of the Existing Note, and, in each case, the Company agrees not to take a position contrary to this Section 12. The Company acknowledges and agrees that (assuming the Holder is not an "affiliate" of the Company as that term is defined in the 1933 Act) (i) the New Preferred Shares and the Final Closing Exchange Shares, upon issuance in accordance herewith and/or the Series C Certificate of Designations, as applicable, will be eligible to be resold pursuant to Rule 144, (ii) the Company is not aware of any event reasonably likely to occur that would reasonably be expected to result in the New Preferred Shares and/or the Final Closing Exchange Shares, as applicable, becoming ineligible to be resold by the Holder pursuant to Rule 144 and (iii) in connection with any resale of the New Preferred Shares and/or the Final Closing Exchange Shares, as applicable, pursuant to Rule 144, the Holder shall solely be required to provide reasonable assurances that such applicable New Preferred Shares and/or the Final Closing Exchange Shares, as applicable, are eligible for resale, assignment or transfer under Rule 144, which shall not include an opinion of Holder's counsel. The Company shall be responsible for any transfer agent fees or DTC fees or legal fees of the Company's counsel with respect to the removal of legends, if any, or issuance of any New Preferred Shares and/or the Final Closing Exchange Shares, as applicable.

12. **Listing**. Prior to the Final Closing Date, the Company shall promptly secure the listing or designation for quotation (as applicable) of all of the Final Closing Exchange Shares upon the Principal Market (subject to official notice of issuance) and shall maintain such listing of all the Final Closing Exchange Shares from time to time issuable under the terms of the Exchange Documents until the Final Closing. Until the Final Closing, the Company shall use its best efforts to maintain the Common Stock's listing on the Principal Market. Prior to the Final Closing, neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 13.

13. **Pre-Final Closing Sales**. Notwithstanding anything herein to the contrary, if at any time during the two (2) Trading Day period immediately prior to the Final Closing Date (the "**Pre-Settlement Period**"), the Holder sells to any Person all, or any portion, of any Final Closing Exchange Shares to be issued hereunder (and/or in accordance with the Series C Certificate of Designations, as applicable) to the Holder in the Final Exchange (collectively, the "**Pre-Settlement Shares**"), such portion of the Final Exchange with respect to such Pre-Settlement Shares shall be deemed to have occurred as of the time of such sale; and provided further that the Company hereby acknowledges and agrees that the forgoing shall not constitute a representation or covenant by the Holder as to whether or not during the Pre-Settlement Period the Holder shall sell any Final Closing Exchange Shares to any Person and that any such decision to sell any Final Closing Exchange Shares by the Holder shall be made, in the sole discretion of the Holder, at the time the Holder elects to effect any such sale, if any.

14. **Blue Sky**. The Company shall make all filings and reports relating to the Transactions required under applicable securities or "Blue Sky" laws of the states of the United States following the date hereof, if any.

15. **Most Favored Nation**. The Company hereby represents and warrants as of the date hereof and covenants and agrees that, prior to the consummation of the last to occur of the Initial Exchange, the Cash Sweep and the Final Exchange, none of the terms offered to any Person with respect to any amendment, modification, waiver or exchange of any warrant to purchase Common Stock (or other similar instrument), including, without limitation with respect to any consent, release, amendment, settlement, or waiver relating thereto (each an "**Settlement Document**"), is or will be more favorable to such Person (other than any reimbursement of legal fees) than those of the Holder and this Agreement. If, and whenever on or after the date hereof and prior to the consummation of the last to occur of the Initial Exchange, the Cash Sweep and the Final Exchange, the Company enters into a Settlement Document, then (i) the Company shall provide notice thereof to the Holder promptly following the occurrence thereof and (ii) the terms and conditions of this Agreement shall be, without any further action by the Holder or the Company, automatically amended and modified in an economically and legally equivalent manner such that the Holder shall receive the benefit of the more favorable terms and/or conditions (as the case may be) set forth in such Settlement Document, provided that upon written notice to the Company at any time the Holder may elect not to accept the benefit of any such amended or modified term or condition, in which event the term or condition contained in this Agreement shall apply to the Holder as it was in effect immediately prior to such amendment or modification as if such amendment or modification never occurred with respect to the Holder. The provisions of this Section 14 shall apply similarly and equally to each Settlement Document.

16. **Independent Nature of Holder's Obligations and Rights**. The obligations of the Holder under this Agreement are several and not joint with the obligations of any other holder of securities of the Company (each, an "**Other Holder**"), and the Holder shall not be responsible in any way for the performance of the obligations of any Other Holder under any other agreement by and between the Company and any Other Holder (each, an "**Other Agreement**"). Nothing contained herein or in any Other Agreement, and no action taken by the Holder pursuant hereto, shall be deemed to constitute the Holder and Other Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder and Other Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement and the Company acknowledges that, to the best of its knowledge, the Holder and the Other Holders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement. The Company, and the Holder confirm that the Holder has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any Other Holder to be joined as an additional party in any proceeding for such purpose.

17. **Miscellaneous**.

17.1 **Successors and Assigns**. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

17.2 **Governing Law; Jurisdiction; Jury Trial**. 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. Each party hereby irrevocably submits to the exclusive jurisdiction of the state or 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 Agreement 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 AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

17.3 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

17.4 **Notices**. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail; or (iii) one Trading Day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be as set forth on the signature pages attached hereto or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change. Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and copy of the message or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by electronic mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively.

17.5 **Broker and Finder's Fees**. Each party represents that it neither is nor will be obligated for any finders' fee or broker commission in connection with this transaction.

17.6 **Amendments and Waivers**. Any term of this Agreement may be amended and the observance of any term of this Agreement 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, or successor and assignee as provided under this Agreement.

17.7 **Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms so long as this Agreement 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).

17.8 **Entire Agreement**. This Agreement together with the other Exchange Documents, represents the entire agreement and understandings between the parties concerning the Transactions and the other matters described herein and therein and supersedes and replaces any and all prior agreements and understandings solely with respect to the subject matter hereof and thereof. Except as expressly set forth herein, nothing herein shall amend, modify or waive any term or condition of the other Exchange Documents.

17.9 **Counterparts**. This Agreement 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.

17.10 **Interpretation**. Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular, the singular the plural, the part the whole, (ii) references to any gender include all genders, (iii) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" and (iv) references to "hereunder" or "herein" relate to this Agreement.

17.11 **No Third Party Beneficiaries**. This Agreement 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.

17.12 **Limited Survival**. Except for the representations and warranties of the Company set forth in Sections 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.8, 7.13, 8.3, 8.4 and 8.5, which shall survive the Final Closing, all representations and warranties of the Company and the Holder set forth herein shall terminate as of the Final Closing. The covenants of the Company and the Holder contained herein shall survive the Final Closing.

17.13 **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 any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

17.14 **Specific Performance**. It is recognized and acknowledged that a breach by any party of any material obligations contained in this Agreement or any of the other Exchange Documents will cause the other parties to sustain injury for which it would not have an adequate remedy at law for money damages. Accordingly, in the event of any such breach, any aggrieved party shall be entitled to the remedy of specific performance of such obligations and interlocutory, preliminary and permanent injunctive and other equitable relief in addition to any other remedy to which it may be entitled, at law or in equity, and each party will waive, in any action for specific performance, interlocutory, preliminary and permanent injunctive relief and/or any other equitable relief, the defense of adequacy of a remedy at law and any requirement for the securing or posting of any bond in connection with the obtaining of any such relief.

17.15 **No Strict Construction**. The language used in this Agreement 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company and the Holder have each executed this Agreement as of the date set forth on the first page of this Agreement.

COMPANY:

AKERNA CORP.

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

Address:

1550 Larimer Street, #246
Denver, Colorado 80202

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

Aggregate Principal of Existing Note:

$ _____

Maximum Aggregate Principal of Existing Note to be exchanged:

$ _____[1]

HOLDER:

HIGH TRAIL INVESTMENTS ON LLC

By: _____
Name:
Title:

Address: _____

_____

_____

_____

Wire Instructions: _____

_____

_____

_____

[1] Insert pro rata amount of $5 million based upon aggregate amount of Notes outstanding as of the date hereof

IN WITNESS WHEREOF, the Holder, and the Company have executed this Agreement as of the date set forth on the first page of this Agreement.

Aggregate Principal of Existing Note:

$ _____

Maximum Aggregate Principal of Existing Note to be exchanged:

$ _____[2]

HOLDER:

ALTO OPPORTUNITY MASTER FUND, SPC - SEGREGATED MASTER PORTFOLIO B

By: _____
Name:
Title:

Address: _____

_____

_____

_____

Wire Instructions: _____

_____

_____

_____

[2] Insert pro rata amount of $5 million based upon aggregate amount of Notes outstanding as of the date hereof

CERTIFICATE OF DESIGNATIONS OF SERIES C NON-CONVERTIBLE PREFERRED STOCK OF AKERNA CORP.

I, [_____], hereby certify that I am the [_____] and [_____] of Akerna Corp. (the "**Company**"), a corporation organized and existing under the Delaware General Corporation Law (the "**DGCL**"), and further do hereby certify:

That pursuant to the authority expressly conferred upon the Board of Directors of the Company (the "**Board**") by the Company's Certificate of Incorporation, as amended (the "**Certificate of Incorporation**"), and Section 151(g) of the DGCL, the Board on _____, 201_ adopted the following resolution determining it desirable and in the best interests of the Company and its stockholders for the Company to create a series of [ ] ( ]) shares of preferred stock designated as "**Series C Non-Convertible Preferred Stock**," none of which shares have been issued:

RESOLVED, that pursuant to the authority vested in the Board this Company, in accordance with the provisions of the Certificate of Incorporation, a series of preferred stock, par value $[ ] per share, of the Company be and hereby is created pursuant to this certificate of designations (this "**Certificate of Designations**"), and that the designation and number of shares thereof and the voting and other powers, preferences and relative, participating, optional or other rights of the shares of such series and the qualifications, limitations and restrictions thereof are as follows:

TERMS OF SERIES C NON-CONVERTIBLE PREFERRED STOCK

1. Designation and Number of Shares. There shall hereby be created and established a series of preferred stock of the Company designated as "Series C Non-Convertible Preferred Stock" (the "**Preferred Shares**"). The authorized number of Preferred Shares shall be [ ] shares. Each Preferred Share shall have a par value of $[ ]. Capitalized terms not defined herein shall have the meaning as set forth in Section 29 below.

2. Dividends. In addition to Section 6 or Section 13 below, from and after the first date of issuance of any Preferred Shares (the "**Initial Issuance Date**"), each holder of a Preferred Share (each, a "**Holder**" and collectively, the "**Holders**") shall be entitled to receive dividends ("**Dividends**") when and as declared by the Board, from time to time, in its sole discretion, which Dividends shall be paid by the Company out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in cash on the Stated Value of such Preferred Share.

3. Voting Rights.

(a) Each Holder of outstanding Preferred Shares will have the voting rights as described in this Section 3, subject to the restrictions provided in this Certificate of Designation. At all times, the Holders of the Preferred Shares shall be entitled to notice of any stockholders' meeting and to vote together with the class of stockholders of Common Stock, as a single class, as of each record date established by the Board of Directors of the Company (each, a "**Record Date**"), except as provided by law, or by written consent in lieu thereof ("**Written Consent**").

(b) For so long as any Preferred Shares remain issued and outstanding, and subject to the Maximum Percentage limitation defined below, the holders of each Preferred Share shall have the right to vote in an amount equal to the voting power of [ ][1] shares of Common Stock (the "**Common Stock Per Share Equivalent Amount**") per each Preferred Share (subject to proportional adjustment upon any stock split, stock dividend, stock combination or recapitalization event of the class of shares of Common Stock on or after the Initial Issuance Date).

(c) To the extent that under the DGCL the vote of the holders of the Preferred Shares, voting separately as a class or series, as applicable, is required to authorize a given action of the Company, the affirmative vote or consent of the holders of at least a majority of the outstanding Preferred Shares (the "**Required Holders**"), voting together in the aggregate and not in separate series unless required under the DGCL, represented at a duly held meeting at which a quorum is presented or by written consent of the Required Holders (except as otherwise may be required under the DGCL), voting together in the aggregate and not in separate series unless required under the DGCL, shall constitute the approval of such action by both the class or the series, as applicable.

4. Maximum Percentage. Notwithstanding anything to the contrary set forth herein, the voting power attributable to any Preferred Share held by any Holder hereunder, shall be automatically reduced, as necessary, such that the aggregate voting power attributable to the Preferred Shares of such applicable Holder (and any other securities of the Company then held by such Holder) or any of its Attribution Parties shall not exceed 19.99% of the voting power of the Company (the "**Maximum Percentage**"). For purposes of the foregoing sentence, the aggregate voting power of a Holder and its Attribution Parties shall include the number of shares of Common Stock, Preferred Shares or other securities of the Company held by such Holder and all of its Attribution Parties that are entitled to vote on such matter pursuant to which this determination is being made. The Company shall not give effect to any voting rights of the Preferred Shares, and any Holder shall not have the right to exercise voting rights with respect to any Preferred Shares pursuant hereto, to the extent that giving effect to such voting rights would result in such Holder (together with its Attribution Parties) being deemed to be entitled to vote in excess of the Maximum Percentage of the voting power of the Company. The provisions of this Section 4 shall be construed and implemented in a manner otherwise than in strict conformity to the extent necessary to correct this Section 4 or any portion thereof which may be defective or inconsistent with the intended voting limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained herein may not be waived by the Company or any Holder of Preferred Shares.

[1] Insert quotient of $1,000 divided by the applicable Conversion Price (as defined in the Existing Note (as defined in the Exchange Agreements)) as of the time of the Exchange (as defined in the Exchange Agreements)

5. Rights Upon Fundamental Transactions.

(a) Assumption. Subject to Section 5(b) below, the Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designations, including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by the Holders and having similar ranking to the Preferred Shares, and satisfactory to the Required Holders and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose shares of common stock are quoted on or listed for trading on an Eligible Market (as defined in the Exchange Agreements. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designations and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designations and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. Notwithstanding the foregoing, such Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of the Preferred Shares. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the voting or redemption of the Preferred Shares.

(b) Automatic Redemption/Exchange Upon a Change of Control. Notwithstanding Section 5(a), in the event of a Fundamental Transaction that constitutes a Change of Control, no later than ten (10) Trading Days prior to the time consummation of a Change of Control (the "**Change of Control Date**"), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to each Holder (a "**Change of Control Notice**"). If the Required Holders vote to approve such Change of Control (each, a "**Permitted Change of Control**"), immediately following the time of

occurrence of such Permitted Change of Control, but in no event later than the second (2nd) Trading Day after such Change of Control, the Preferred Shares of each Holder then outstanding shall be automatically redeemed and/or exchanged, as applicable, (each a "**Change of Control Redemption/Exchange**") by the Company or the acquiring party (or its designee), as applicable, for an aggregate amount of consideration (whether consisting of cash, assets or shares, as applicable) (the "**Change of Control Redemption/Exchange Consideration**") equal to the product of (x) as determined in reference to any given holder of one (1) share of Common Stock immediately prior to such Permitted Change of Control, such aggregate amount of cash, assets, shares and/or other property, as applicable as shall be held by such holder after giving effect to such Permitted Change of Control and the Change of Control Redemption/Exchange (solely with respect to such one (1) share of Common Stock held by such holder immediately prior to such Permitted Change of Control) and (y) the Common Stock Per Share Equivalent Amount of the Preferred Shares subject to such Change of Control Redemption/Exchange by such applicable Holder; provided, however, that to the extent that such Holder's right to participate in any such Change of Control Redemption/Exchange would result in such Holder and its other Attribution Parties exceeding the Maximum Rights Percentage, then such Holder shall not participate in such Change of Control Redemption/Exchange in excess of the Maximum Rights Percentage (and shall not have beneficial ownership of such shares of Common Stock (or other equivalent security) as a result of such Change of Control Redemption/Exchange (and beneficial ownership) to such extent of any such excess) and such remaining portion of such Change of Control Redemption/Exchange Consideration shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times, if any, such Holder shall be granted such remaining portion of such Change of Control Redemption/Exchange Consideration upon the redemption and/or exchange of such remaining Preferred Shares. The Company agrees not to consummate any Change of Control without complying with this Section 5(b).

6. Rights Upon Issuance of Purchase Rights. In addition to any adjustments pursuant to Section 13 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class of Common Stock (the "**Purchase Rights**"), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which such Holder could have acquired if such Holder had held the Common Stock Per Share Equivalent Amount of all the Preferred Shares held by such Holder immediately prior to the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder and its other Attribution Parties owning more than 4.99% of the Common Stock (or other equivalent security) then outstanding (the "**Maximum Rights Percentage**"), then such Holder shall not be entitled to participate in such Purchase Right in excess of the Maximum Rights Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to such extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of such Holder until such time or times, if ever, as its right thereto would not result in such Holder and the other Attribution Parties exceeding the Maximum Rights Percentage, at which time or times such Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation.

7. Redemption at the Company's Election. At any time after the date hereof, the Company shall have the right to redeem all, but not less than all, of the Preferred Shares then outstanding (the "**Company Optional Redemption Amount**") on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The Preferred Shares subject to redemption pursuant to this Section 7 shall be redeemed by the Company in cash at a price (the "**Company Optional Redemption Price**") equal to the Underlying Amount being redeemed as of the Company Optional Redemption Date. The Company may exercise its right to require redemption under this Section 7 by delivering a written notice thereof by electronic mail and overnight courier to all, but not less than all, of the Holders (the "**Company Optional Redemption Notice**" and the date all of the Holders received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**") which date shall not be less than two (2) Trading Days nor more than twenty (20) Trading Days following the Company Optional Redemption Notice Date, and (y) state the aggregate Underlying Amount of the Preferred Shares which is being redeemed in such Company Optional Redemption from such Holder and all of the other Holders of the Preferred Shares pursuant to this Section 7 on the Company Optional Redemption Date. Redemptions made pursuant to this Section 7 shall be made in accordance with Section 9.

8. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Exchange Agreements), Bylaws (as defined in the Exchange Agreements) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designations, and will at all times in good faith carry out all the provisions of this Certificate of Designations and take all action as may be required to protect the rights of the Holders hereunder.

9. Holder Optional Redemption after Maturity Date. At any time from and after the tenth (10th) Business Day prior to the earlier of (x) September 30, 2023 and (y) any termination of the Merger Agreement (as defined in the Exchange Agreement) (the "**Maturity Date**"), any Holder may require the Company to redeem (a "**Maturity Redemption**") all or any number of Preferred Shares held by such Holder at a purchase price equal to 100% of the Underlying Amount of such Preferred Shares (the "**Maturity Redemption Price**") by delivery of written notice thereof (the "**Maturity Redemption Notice**") to the Company. The Maturity Redemption Notice shall state the date the Company is required to pay to such Holder such Maturity Redemption Price (the "**Maturity Redemption Date**"), which date shall be no earlier than ten (10) Business Days following the date of delivery of such Maturity Redemption Notice. Redemptions required by this Section 9 shall be made in accordance with the provisions of Section 10.

10. Redemptions.

(a) General. The Company shall deliver the applicable Company Optional Redemption Price to each Holder in cash on the applicable Company Optional Redemption Date. If a Holder has submitted a Maturity Redemption Notice in accordance with Section 9 above, the Company shall deliver the applicable Maturity Redemption Price to such Holder in cash on the applicable Maturity Redemption Date. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time a Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of such Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to such Holder under such other Transaction Document and, upon payment in full in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Preferred Shares, the Company shall promptly cause to be issued and delivered to such Holder a new certificate evidencing the Preferred Shares (each, a "**Preferred Share Certificate**") (in accordance with Section 16) (or evidence of the creation of a new Book-Entry) representing the number of Preferred Shares which have not been redeemed. In the event that the Company does not pay the applicable Redemption Price to a Holder within the time period required for any reason (including, without limitation, to the extent such payment is prohibited pursuant to the DGCL), at any time thereafter and until the Company pays such unpaid Redemption Price in full, such Holder shall have the option, in lieu of redemption, to require the Company to promptly return to such Holder all or any of the Preferred Shares that were submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Preferred Shares, and (y) the Company shall immediately return the applicable Preferred Share Certificate, or issue a new Preferred Share Certificate (in accordance with Section 16(d)), to such Holder (unless the Preferred Shares are held in Book-Entry form, in which case the Company shall deliver evidence to such Holder that a Book-Entry for such Preferred Shares then

exists), and in each case the Additional Amount of such Preferred Shares shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 9, if applicable) minus (2) the Stated Value portion of the Underlying Amount submitted for redemption. A Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Preferred Shares subject to such notice.

(b) Redemption by Multiple Holders. Upon the Company's receipt of a Redemption Notice from any Holder for redemption or repayment, the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to each other Holder by electronic mail a copy of such notice. If the Company receives one or more Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the initial Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the initial Redemption Notice and the Company is unable to redeem all of the Underlying Amount of such Preferred Shares designated in such initial Redemption Notice and such other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each Holder based on the Stated Value of the Preferred Shares submitted for redemption pursuant to such Redemption Notices received by the Company during such seven (7) Business Day period.

11. Registration; Book-Entry. At the time of issuance of any Preferred Shares hereunder, the applicable Holder may, by written request (including by electronic-mail) to the Company, elect to receive such Preferred Shares in the form of one or more Preferred Share Certificates or in Book-Entry form. The Company (or the Company's transfer agent (the "**Transfer Agent**"), as custodian for the Preferred Shares, if applicable) shall maintain a register (the "**Register**") for the recordation of the names and addresses of the Holders of each Preferred Share and the Stated Value of the Preferred Shares and whether the Preferred Shares are held by such Holder in Preferred Share Certificates or in Book-Entry form (the "**Registered Preferred Shares**"). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and each Holder of the Preferred Shares shall treat each Person whose name is recorded in the Register as the owner of a Preferred Share for all purposes (including, without limitation, the right to receive payments and Dividends hereunder) notwithstanding notice to the contrary. A Registered Preferred Share may be assigned, transferred or sold only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell one or more Registered Preferred Shares by such Holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Preferred Shares in the same aggregate Stated Value as the Stated Value of the surrendered Registered Preferred Shares to the designated assignee or transferee pursuant to Section 16, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of such Registered Preferred Shares within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 11, following conversion of any Preferred Shares in accordance with the terms hereof, the applicable Holder shall not be required to physically surrender such Preferred Shares held in the form of a Preferred Share Certificate to the Company unless (A) the full or remaining number of Preferred Shares represented by the applicable Preferred Share Certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 11) or (B) such Holder has provided the Company with prior written notice requesting reissuance of Preferred Shares upon physical surrender of the applicable Preferred Share Certificate. Each Holder and the Company shall maintain records showing the Stated Value, Dividends and Late Charges exchanged and/or paid (as the case may be) and the dates of such exchanges and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of a Preferred Share Certificate upon exchange and/or redemption, as applicable. If the Company does not update the Register to record such Stated Value, Dividends and Late Charges exchanged and/or paid (as the case may be) and the dates of such exchanges and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence. In the event of any dispute or discrepancy, such records of such Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each Preferred Share Certificate shall bear the following legend:

> ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES C PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 11 THEREOF. THE NUMBER OF SHARES OF SERIES C PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES C PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 11 OF THE CERTIFICATE OF DESIGNATIONS RELATING TO THE SHARES OF SERIES C PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

12. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its stockholders (the "**Liquidation Funds**"), in an amount per share equal to the amount per share such Holder would receive if such Holder had held such aggregate amount of shares of Common Stock equal to the Common Stock Per Share Equivalent Amount of all the Preferred Shares held by such Holder immediately prior to the date of such payment (without regard to any limitation on voting set forth herein).

13. Distribution of Assets. In addition to any adjustments pursuant to Section 6, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all holders of shares of Common Stock, by way of return of capital or otherwise (including without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (the "**Distributions**"), then each Holder, as holders of Preferred Shares, will be entitled to such Distributions as if such Holder had had held the Common Stock Per Share Equivalent Amount of all the Preferred Shares held by such Holder immediately prior to the date immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that such Holder's right to participate in any such Distribution would result in such Holder and the other Attribution Parties exceeding the Maximum Rights Percentage, then such Holder shall not be entitled to participate in such Distribution in excess of the Maximum Rights Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to such extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of such Holder until such time or times as its right thereto would not result in such Holder and its other Attribution Parties exceeding the Maximum Rights Percentage, at which time or times, if any, such Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

14. Vote to Change the Terms of or Issue Preferred Shares. In addition to any other rights provided by law, except where the vote or written consent of the holders of a greater number of shares is required by law or by another provision of the Certificate of Incorporation, without first obtaining the affirmative vote at a meeting duly called for such purpose or the written consent without a meeting of the Required Holders, voting together as a single class, the Company shall not: (a) amend or repeal any provision of, or add any provision to, its Certificate of Incorporation or bylaws, or file any certificate of designations or articles of amendment of any series of shares of preferred stock, if such action would adversely alter or change in any respect the preferences, rights, privileges or powers, or restrictions provided for the benefit of the Preferred Shares hereunder, regardless of whether any such action shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation or otherwise; (b) increase or decrease the authorized number of Preferred Shares; (c) issue any Preferred Shares other than as contemplated hereby or pursuant to the Exchange Agreements; or (d) whether or not prohibited by the terms of the Preferred Shares, circumvent a right of the Preferred Shares hereunder.

15. Transfer of Preferred Shares. A Holder may transfer some or all of its Preferred Shares without the consent of the Company unless such transfer would violate an agreement between the Company and such Holder.

16. Reissuance of Preferred Share Certificates and Book Entries.

(a) Transfer. If any Preferred Shares are to be transferred, the applicable Holder shall surrender the applicable Preferred Share Certificate to the Company (or, if the Preferred Shares are held in Book-Entry form, a written instruction letter to the Company), whereupon the Company will forthwith issue and deliver upon the order of such Holder a new Preferred Share Certificate (in accordance with Section 16(d)) (or evidence of the transfer of such Book-Entry), registered as such Holder may request, representing the outstanding number of Preferred Shares being transferred by such Holder and, if less than the entire outstanding number of Preferred Shares is being transferred, a new Preferred Share Certificate (in accordance with Section 16(d)) to such Holder representing the outstanding number of Preferred Shares not being transferred (or evidence of such remaining Preferred Shares in a Book-Entry for such Holder).

(b) Lost, Stolen or Mutilated Preferred Share Certificate. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of a Preferred Share Certificate (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of such Preferred Share Certificate, the Company shall execute and deliver to such Holder a new Preferred Share Certificate (in accordance with Section 16(d)) representing the applicable outstanding number of Preferred Shares.

(c) Preferred Share Certificate and Book-Entries Exchangeable for Different Denominations and Forms. Each Preferred Share Certificate is exchangeable, upon the surrender hereof by the applicable Holder at the principal office of the Company, for a new Preferred Share Certificate or Preferred Share Certificate(s) or new Book-Entry (in accordance with Section 16(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Preferred Share Certificate, and each such new Preferred Share Certificate and/or new Book-Entry, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Preferred Share Certificate as is designated in writing by such Holder at the time of such surrender. Each Book-Entry may be exchanged into one or more new Preferred Share Certificates or split by the applicable Holder by delivery of a written notice to the Company into two or more new Book-Entries (in accordance with Section 16(d)) representing, in the aggregate, the outstanding number of the Preferred Shares in the original Book-Entry, and each such new Book-Entry and/or new Preferred Share Certificate, as applicable, will represent such portion of such outstanding number of Preferred Shares from the original Book-Entry as is designated in writing by such Holder at the time of such surrender.

(d) Issuance of New Preferred Share Certificate or Book-Entry. Whenever the Company is required to issue a new Preferred Share Certificate or a new Book-Entry pursuant to the terms of this Certificate of Designations, such new Preferred Share Certificate or new Book-Entry (i) shall represent, as indicated on the face of such Preferred Share Certificate or in such Book-Entry, as applicable, the number of Preferred Shares remaining outstanding (or in the case of a new Preferred Share Certificate or new Book-Entry being issued pursuant to Section 16(a) or Section 16(c), the number of Preferred Shares designated by such Holder) which, when added to the number of Preferred Shares represented by the other new Preferred Share Certificates or other new Book-Entry, as applicable, issued in connection with such issuance, does not exceed the number of Preferred Shares remaining outstanding under the original Preferred Share Certificate or original Book-Entry, as applicable, immediately prior to such issuance of new Preferred Share Certificate or new Book-Entry, as applicable, and (ii) shall have an issuance date, as indicated on the face of such new Preferred Share Certificate or in such new Book-Entry, as applicable, which is the same as the issuance date of the original Preferred Share Certificate or in such original Book-Entry, as applicable.

17. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designations shall be cumulative and in addition to all other remedies available under this Certificate of Designations and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designations. No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of a Holder at law or equity or under this Certificate of Designations or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). No failure on the part of a Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by such Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of any Holder at law or equity or under Preferred Shares or any of the documents shall not be deemed to be an election of such Holder's rights or remedies under such documents or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designations.

18. Payment of Collection, Enforcement and Other Costs. If (a) any Preferred Shares are placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or a Holder otherwise takes action to collect amounts due under this Certificate of Designations with respect to the Preferred Shares or to enforce the provisions of this Certificate of Designations or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Certificate of Designations, then the Company shall pay the costs incurred by such Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Certificate of Designations with respect to any Preferred Shares shall be affected, or limited, by the fact that the purchase price paid for each Preferred Share was less than the original Stated Value thereof.

19. Construction; Headings. This Certificate of Designations shall be deemed to be jointly drafted by the Company and the Holders and shall not be construed against any such Person as the drafter hereof. The headings of this Certificate of Designations are for convenience of reference and shall not form part of, or affect the interpretation of, this Certificate of Designations. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Certificate of Designations instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Certificate of Designations. Terms used in this Certificate of Designations and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Initial Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Required Holders.

20. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designations shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any Person as the drafter hereof. Notwithstanding the foregoing, nothing contained in this Section 20 shall permit any waiver of any provision of Section 4.

21. Dispute Resolution.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to the applicable Redemption Price (including, without limitation, a dispute relating to the determination thereof), the Company or the applicable Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by such Holder at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to promptly resolve such dispute, at any time after the second (2^{nd}) Business Day following such initial notice by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 21 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5^{th}) Business Day immediately following the date on which such Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and such Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 21 constitutes an agreement to arbitrate between the Company and each Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that any Holder is authorized to apply for an order to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 21, (ii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designations and any other applicable Transaction Documents, (iii) the applicable Holder (and only such Holder with respect to disputes solely relating to such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 21 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the procedures set forth in this Section 21 and (iv) nothing in this Section 21 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 21).

22. Notices; Currency; Payments.

(a) Notices. The Company shall provide each Holder of Preferred Shares with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designations, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designations, unless otherwise provided herein, such notice must be in writing and shall be given in accordance with Section 16.4 of the Exchange Agreements. The Company shall provide each Holder with prompt written notice of all actions taken pursuant to this Certificate of Designations, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, or (B) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to such Holder.

(b) Currency. All dollar amounts referred to in this Certificate of Designations are in United States Dollars ("**U.S. Dollars**"), and all amounts owing under this Certificate of Designations shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. "**Exchange Rate**" means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Certificate of Designations, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Certificate of Designations, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by wire transfer of immediately available funds pursuant to wire transfer instructions that Holder shall provide to the Company in writing from time to time. Whenever any amount expressed to be due by the terms of this Certificate of Designations is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount due under the Transaction Documents which is not paid when due shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full ("**Late Charge**").

23. Waiver of Notice. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Certificate of Designations and the Exchange Agreements.

24. Governing Law. This Certificate of Designations shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Certificate of Designations shall be governed by, the internal laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Except as otherwise required by Section 21 above, the Company 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. 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 to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude any Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to such Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of such Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 21 above. **THE COMPANY 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 IN CONNECTION WITH OR ARISING OUT OF THIS CERTIFICATE OF DESIGNATIONS OR ANY TRANSACTION CONTEMPLATED HEREBY.**

25. Judgment Currency.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 25 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Certificate of Designations, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 25(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 25(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision 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 Certificate of Designations.

26. Severability. If any provision of this Certificate of Designations 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 Certificate of Designations so long as this Certificate of Designations 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).

27. Maximum Payments. Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the applicable Holder and thus refunded to the Company.

28. Stockholder Matters; Amendment.

(a) Stockholder Matters. Any stockholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designations or otherwise with respect to the issuance of Preferred Shares may be effected by written consent of the Company's stockholders or at a duly called meeting of the Company's stockholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting stockholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. Except for Section 4, which may not be amended or waived hereunder, this Certificate of Designations or any provision hereof may be amended by obtaining (i) the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the DGCL, of the Required Holders, voting separate as a single class, (ii) such other stockholder approval, if any, as may then be required pursuant to the DGCL and the Certificate of Incorporation and (iii) the approval of the Board of Directors of the Company.

29. Certain Defined Terms. For purposes of this Certificate of Designations, the following terms shall have the following meanings:

(a) "**1934 Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(b) "**Additional Amount**" means, as of the applicable date of determination, with respect to each Preferred Share, all declared and unpaid Dividends on such Preferred Share.

(c) "**Affiliate**" or "**Affiliated**" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(d) "**Attribution Parties**" means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Initial Issuance Date, directly or indirectly managed or advised by a Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of such Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with such Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with such Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject

collectively such Holder and all other Attribution Parties to the Maximum Percentage.

(e) "**Book-Entry**" means each entry on the Register evidencing one or more Preferred Shares held by a Holder in lieu of a Preferred Share Certificate issuable hereunder.

(f) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York 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.

(g) "**Change of Control**" means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company's voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(h) "**Common Stock**" means (i) the Company's shares of common stock, $[ ] par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(i) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(j) "**Exchange Agreements**" means those certain Exchange Agreements, each by and between the Company and an initial holder of Preferred Shares, dated as of [ ], as may be amended from time in accordance with the terms thereof.

(k) "**Fundamental Transaction**" means (i) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (B) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its "significant subsidiaries" (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (C) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (D) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (E) reorganize, recapitalize or reclassify its Common Stock, (ii) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Certificate of Designations calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company, or (iii) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(l) "**Group**" means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(m) "**Liquidation Event**" means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

(n) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) "**Redemption Notices**" means, collectively, the Company Optional Redemption Notices and the Maturity Redemption Notice, and each of the foregoing,

individually, a "**Redemption Notice**."

(r) "**Redemption Prices**" means, collectively, any Maturity Redemption Price and Company Optional Redemption Price, and each of the foregoing, individually, a "**Redemption Price**."

(s) "**SEC**" means the United States Securities and Exchange Commission or the successor thereto.

(t) "**Stated Value**" shall mean $1,000 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

(u) **"Subject Entity**" means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(v) "**Subsidiaries**" shall have the meaning as set forth in the Exchange Agreements.

(w) "**Successor Entity**" means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

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

(y) "**Transaction Documents**" means the Exchange Agreements, this Certificate of Designations and each of the other agreements and instruments entered into or delivered by the Company or any of the Holders in connection with the transactions contemplated by the Exchange Agreements, all as may be amended from time to time in accordance with the terms thereof.

(z) "**Underlying Amount**" means the sum of (x) means, with respect to each Preferred Share, as of the applicable date of determination, the sum of (1) the Stated Value thereof plus (2) the Additional Amount thereon and any accrued and unpaid Late Charges with respect to such Stated Value and Additional Amount as of such date of determination.

30. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designations, 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 on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, 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 Holder explicitly in writing in such notice (or immediately upon receipt of notice from such Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from such Holder), such Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 30 shall limit any obligations of the Company, or any rights of any Holder, under Section 9 of the Exchange Agreements.

31. Absence of Trading and Disclosure Restrictions. The Company acknowledges and agrees that no Holder is a fiduciary or agent of the Company and that each Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of such Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that each Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

* * * * *

IN WITNESS WHEREOF, the Company has caused this Certificate of Designations of Series C Convertible Preferred Stock of Akerna Corp. to be signed by its _____ on this ___ day of _____, 20__.

AKERNA CORP.

By: _____
Name:
Title:

Exhibit 10.2

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

January 27, 2023

High Trail Investments ON LLC
c/o High Trail Capital LP
80 River Street, Suite 4C
Hoboken, NJ 07030

Re: Conversion Price Reduction

Dear Sirs:

Reference is hereby made to that certain Securities Purchase Agreement, dated October 5, 2021, by and among Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Denver, Colorado 80202 (the "**Company**"), the investor signatory hereto ("**you**" or the "**Investor**") and certain other buyers signatory thereto (as amended, the "**Securities Purchase Agreement**"), pursuant to which you acquired, among other things, certain senior secured convertible notes (as amended, including any senior secured convertible notes issued in exchange therefor, the "**Securities**") convertible into shares of Common Stock (as defined in the Securities Purchase Agreement) in accordance with the terms of the Securities. Capitalized terms not defined herein shall have the meaning as set forth in the Securities Purchase Agreement or the Securities, as applicable.

Pursuant to Section 7(f) of the Securities, we hereby provide you with notice that the Company desires your consent pursuant to Section 7(f) of the Securities, to lower the Conversion Price of your Securities for each date after the Effective Time (as defined below) (each, a "**Conversion Price Reduction**", and each such date, a "**Conversion Price Reduction Measuring Date**"), effective (the "**Effective Time**") as of the time of your execution of this letter, to $1.20 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events during such measuring period, the "**New Alternate Conversion Price**"); provided, that at any time after 6 p.m. New York city time and prior to 6 a.m. New York city time on any given date of determination (each, a "**Termination Eligibility Period**"), the Company may, by delivery written notice to the Investor (each, a "**Termination Notice**"), terminate the Investor's right to effect any future Conversion Price Reductions pursuant to this letter (the time of such delivery, the "**Conversion Price Reduction Termination Time**"); provided however that the Company may not deliver any Termination Notice hereunder prior to the date that is the later of (i) 14 calendar days from the Effective Time and (ii) the date on which the Company closes on a Subsequent Placement for a minimum of $500,000 in gross aggregate proceeds, which Subsequent Placement will not include the offering of Excluded Securities (as defined in the Securities); provided, further, that (x) a Termination Notice shall only be effective if delivered to the Investor during a Termination Eligibility Period, (y) notwithstanding the delivery of a Termination Notice to the Investor during a Termination Eligibility Period, the Company remains obligated to honor all conversions of the Securities (including, without limitation, any shares of Common Stock to be delivered to the Investor (or its designee) with respect thereto) at the applicable New Alternate Conversion Price occurring prior to such applicable Conversion Price Reduction Termination Time. Please execute this letter in the signature block below if you consent to the Company effecting the Conversion Price Reduction.

The Company shall, on or before 8:30 a.m., New York City time, on the first business day after the date of this letter, file a Current Report on Form 8-K with the SEC disclosing all material terms of the transactions contemplated hereby and attaching the form of this letter as an exhibit thereto (collectively with all exhibits attached thereto, the "**8-K Filing**"). From and after the filing of the 8-K Filing with the SEC, the Investor shall not be in possession of any material, nonpublic information received from the Company or 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, effective upon the issuance of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any letter, 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 Investor or any of its affiliates, on the other hand, shall terminate and be of no further force or effect. The Company understands and confirms that the Investor will rely on the foregoing representations in effecting transactions in securities of the Company.

The Company shall reimburse Kelley Drye & Warren LLP for all reasonable costs and expenses incurred by it in connection with preparing and delivering this letter (including, without limitation, all reasonable legal fees and disbursements in connection therewith, and due diligence in connection with the transactions contemplated thereby).

Section 9 of the Securities Purchase Agreement is hereby incorporated by reference herein, mutatis mutandis.

If you have any questions regarding the foregoing, please feel free to contact Jessica Billingsley at (970) 729-0372 by email to jlb@akerna.com.

Sincerely,

AKERNA CORP.

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

Agreed to and Acknowledged:

HIGH TRAIL INVESTMENTS ON LLC

By: _____
Name:
Title:

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

January 27, 2023

Alto Opportunity Master Fund,
SPC - Segregated Master Portfolio B
55 Post Rd West, 2nd Floor
Westport, CT 06880

Re: Conversion Price Reduction

Dear Sirs:

Reference is hereby made to that certain Securities Purchase Agreement, dated October 5, 2021, by and among Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Denver, Colorado 80202 (the "**Company**"), the investor signatory hereto ("**you**" or the "**Investor**") and certain other buyers signatory thereto (as amended, the "**Securities Purchase Agreement**"), pursuant to which you acquired, among other things, certain senior secured convertible notes (as amended, including any senior secured convertible notes issued in exchange therefor, the "**Securities**") convertible into shares of Common Stock (as defined in the Securities Purchase Agreement) in accordance with the terms of the Securities. Capitalized terms not defined herein shall have the meaning as set forth in the Securities Purchase Agreement or the Securities, as applicable.

Pursuant to Section 7(f) of the Securities, we hereby provide you with notice that the Company desires your consent pursuant to Section 7(f) of the Securities, to lower the Conversion Price of your Securities for each date after the Effective Time (as defined below) (each, a "**Conversion Price Reduction**", and each such date, a "**Conversion Price Reduction Measuring Date**"), effective (the "**Effective Time**") as of the time of your execution of this letter, to $1.20 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events during such measuring period, the "**New Alternate Conversion Price**"); provided, that at any time after 6 p.m. New York city time and prior to 6 a.m. New York city time on any given date of determination (each, a "**Termination Eligibility Period**"), the Company may, by delivery written notice to the Investor (each, a "**Termination Notice**"), terminate the Investor's right to effect any future Conversion Price Reductions pursuant to this letter (the time of such delivery, the "**Conversion Price Reduction Termination Time**"); provided however that the Company may not deliver any Termination Notice hereunder prior to the date that is the later of (i) 14 calendar days from the Effective Time and (ii) the date on which the Company closes on a Subsequent Placement for a minimum of $500,000 in gross aggregate proceeds, which Subsequent Placement will not include the offering of Excluded Securities (as defined in the Securities); provided, further, that (x) a Termination Notice shall only be effective if delivered to the Investor during a Termination Eligibility Period, (y) notwithstanding the delivery of a Termination Notice to the Investor during a Termination Eligibility Period, the Company remains obligated to honor all conversions of the Securities (including, without limitation, any shares of Common Stock to be delivered to the Investor (or its designee) with respect thereto) at the applicable New Alternate Conversion Price occurring prior to such applicable Conversion Price Reduction Termination Time. Please execute this letter in the signature block below if you consent to the Company effecting the Conversion Price Reduction.

The Company shall, on or before 8:30 a.m., New York City time, on the first business day after the date of this letter, file a Current Report on Form 8-K with the SEC disclosing all material terms of the transactions contemplated hereby and attaching the form of this letter as an exhibit thereto (collectively with all exhibits attached thereto, the "**8-K Filing**"). From and after the filing of the 8-K Filing with the SEC, the Investor shall not be in possession of any material, nonpublic information received from the Company or 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, effective upon the issuance of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any letter, 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 Investor or any of its affiliates, on the other hand, shall terminate and be of no further force or effect. The Company understands and confirms that the Investor will rely on the foregoing representations in effecting transactions in securities of the Company.

The Company shall reimburse Kelley Drye & Warren LLP for all reasonable costs and expenses incurred by it in connection with preparing and delivering this letter (including, without limitation, all reasonable legal fees and disbursements in connection therewith, and due diligence in connection with the transactions contemplated thereby).

Section 9 of the Securities Purchase Agreement is hereby incorporated by reference herein, mutatis mutandis.

If you have any questions regarding the foregoing, please feel free to contact Jessica Billingsley at (970) 729-0372 or by email to jlb@akerna.com.

Sincerely,

AKERNA CORP.

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

Agreed to and Acknowledged:

ALTO OPPORTUNITY MASTER FUND,
SPC - SEGREGATED MASTER PORTFOLIO B

By: _____
Name:
Title:

Exhibit 99.1

Akerna Corp. Announces Merger with Gryphon Digital Mining and Sale of Software Business to POSaBIT

Gryphon Digital Mining, a privately held bitcoin mining company, to merge with Akerna in an all-stock transaction that will advance Gryphon's leading ESG-committed, carbon neutral bitcoin mining business

Akerna to sell its cannabis software business, including MJ Platform and Leaf Data Systems, to POSaBIT in a $4 million cash transaction

DENVER, January 27, 2023 /Globe Newswire/ -- Akerna Corp. ("Akerna") (Nasdaq: KERN) today announced it will merge with Gryphon Digital Mining, Inc. ("Gryphon") in an all-stock deal. Simultaneous with the closing of the merger with Gryphon, Akerna will sell its software business to POSaBIT Systems Corporation ("POSaBIT") (CSE: PBIT, OTC: POSAF), a leading provider of payments infrastructure in the cannabis industry.

Gryphon, a leading net carbon neutral bitcoin miner, will be merging with Akerna by way of an Agreement and Plan of Merger to create a leading, ESG-committed, carbon-neutral bitcoin miner. Upon completion of the merger, Akerna will change its name to Gryphon Digital Mining, Inc. The merger is expected to provide Akerna shareholders with access to the bitcoin mining industry with one of its premier operators.

Gryphon brings a top-tier bitcoin mining operation to Akerna shareholders. Since it commenced bitcoin mining operations in September 2021, Gryphon has consistently ranked among the top three miners on a bitcoin efficiency[1] basis according to publicly available data and has finished at or tied for first place in nine of the 12 months of 2022. Through its self-mining operations and royalty stream, Gryphon has a potential revenue generating profile of 1.1 exahash per second ("EH/s") on a cost basis of 0.75 EH/s.

POSaBIT will be acquiring MJ Freeway, including MJ Platform and Leaf Data System brands, and Ample Organics. This transaction provides POSaBIT with an opportunity to combine complementary offerings to scale its business and expand its footprint with established platforms. These complementary products are likely to be mutually beneficial, as together they are expected to provide a comprehensive retail solution for cannabis operators, complete with supply chain compliance. In addition to retail operators, these products are anticipated to continue to serve all verticals of the cannabis industry, and Akerna and POSaBIT do not anticipate any interruption to clients as a result of the transactions.

About the Proposed Transactions:

In connection with the two transactions, Akerna entered into two separate definitive agreements.

The first definitive agreement is a Securities Purchase Agreement for the sale of Akerna's MJ Freeway and Ample Organics business units to POSaBIT for $4 million in cash. In connection with the closing of the proposed sale transaction, Akerna plans to use the proceeds of the transaction, after expenses, to pay its remaining outstanding account payables and pay down any remaining principal balance on its outstanding senior secured convertible notes, net of $500,000 retained for outstanding obligations and net cash requirements associated with the proposed merger between Akerna and Gryphon.

The second definitive agreement is an Agreement and Plan of Merger, pursuant to which Gryphon will become a wholly-owned subsidiary of Akerna in an all-stock transaction. Upon completion of the proposed merger, on a pro forma basis and based upon the number of Akerna shares to be issued in the proposed merger, current Gryphon equityholders are expected to own approximately 92.5% of the combined company and current Akerna equityholders are expected to own approximately 7.5% of the combined company. The combined company is expected to continue to be publicly traded on Nasdaq.

Upon closing of the proposed merger, Akerna Corp. will be renamed Gryphon Digital Mining Inc., and will be headquartered in Las Vegas, Nevada. Rob Chang will serve as Chief Executive Officer of the combined company. The merger agreement provides that the Board of Directors of the combined company will comprise of seven members of which a minimum of five will be filled upon completion of the merger, one designated by Akerna, being Jessica Billingsley, its current Chief Executive Officer, and the remaining six positions to be designated by Gryphon.

[1] Bitcoin Efficiency is a measure of the number of bitcoin generated per exahash of hashing power deployed. Gryphon includes the bitcoin-equivalents obtained from its royalty stream in its calculation of Bitcoin Efficiency.

Both transactions are conditioned on the other transaction closing and both transactions are subject to the approval of the stockholders of Akerna. Approval of the merger transaction is subject to the approval of the stockholders of Gryphon and approval of the combined company for listing on the Nasdaq Capital Market

About Akerna

Akerna (Nasdaq: KERN) is a company focused on compliantly serving the cannabis, hemp, and CBD industry. First launched in 2010, Akerna has tracked more than $20 billion in cannabis sales to date and is the first cannabis software company listed on Nasdaq. Using connected data and information to propel the cannabis industry forward, Akerna empowers businesses, governments, patients, and consumers to make smart decisions.

The Company's cornerstone technology, MJ Platform, is a leading infrastructure as a service platform, powers retailers, manufacturers, brands, distributors, and cultivators. Akerna also offers a complete suite of professional consulting services and data analytics for businesses as well as Leaf Data Systems and Ample Organics.

For more information, visit https://www.akerna.com/.

About Gryphon Digital Mining

Gryphon Digital Mining, Inc. is an innovative venture in the cryptocurrency space dedicated to helping bring digital assets onto the clean energy grid. With a talented leadership team coming from globally recognized brands, Gryphon is assembling thought leaders to improve digital asset network infrastructure. More information is available on https://gryphondigitalmining.com/.

About POSaBIT

POSaBIT (CSE: PBIT) POSaBIT is a FinTech, working exclusively within the cannabis industry. We provide a best-in-class Point-of-Sale solution and are the leading cashless payment provider for cannabis retailers. We work tirelessly to build better financial services and transaction methods for merchants. We bring cutting edge software and technology to the cannabis industry so that all merchants can have a safe and compliant set of services to solve the problems of a cash-only industry. For additional information, visit www.posabit.com.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material with respect to the proposed transactions between Akerna and Gryphon and between Akerna and POSaBIT. In connection with the proposed transactions, Akerna intends to file relevant materials with the United States Securities and Exchange Commission, or the SEC, including a registration statement on Form S-4 that will contain 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 when they become available because they will contain important information about Akerna, Gryphon and the proposed transactions.*** This communication 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, once available, 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 communication 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, POSaBIT 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, will be set forth in the proxy statement/prospectus, which will be included in Akerna's registration statement on Form S-4 when it is filed with the SEC. You may obtain free copies of these documents as described above.

Cautionary Statements Regarding Forward-Looking Statements

This press release contains forward-looking statements based upon the current expectations of Akerna and Gryphon. Forward-looking statements involve risks and uncertainties and include, but are not limited to, statements about the structure, timing and completion of the proposed transactions; the listing of the combined company on Nasdaq after the closing of the proposed merger; expectations regarding the ownership structure of the combined company after the closing of the proposed merger; the expected executive officers and directors of the combined company; the expected cash position of each of Akerna and Gryphon and the combined company at the closing of the proposed merger; the future operations of the combined company; and other statements that are not historical fact. 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 POSaBIT 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; and (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. 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, 2021 and Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 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 expressly disclaims 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.

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