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): **April 5, 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 April 28, 2023, Akerna Corp., a Delaware corporation ("Akerna"), entered into a securities purchase agreement (the "SPA") with Akerna Canada Ample Exchange Inc. ("Akerna Exchange") and MJ Acquisition Corp. ("MJA"). 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 MJA (or an affiliate of MJA) all of the membership interests in MJ Freeway, LLC ("MJF") and Akerna Exchange will sell to MJA all of the outstanding capital stock of Ample Organics Inc. ("Ample") (jointly, such sales, the "Sale Transaction") for a purchase price of $5,000,000, consisting of $4,000,000 in cash at closing and a loan by MJA to Akerna in the principal amount of $1,000,000 evidenced by a note and security documents as described below, such note to be deemed paid in full upon closing.

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 capital (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 MJA 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 MJA 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 MJA, 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 MJF 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 Agreement and Plan of Merger previously disclosed on January 27, 2023). 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 MJA notice of the superior offer and time to make a counter-proposal to amend the terms of the SPA.

Under the SPA, Akerna and MJA 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 pursuant to the Agreement and Plan of Merger previously disclosed on January 27, 2023. The obligation of MJA 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. MJA 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 MJA 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 MJA or Akerna terminates the SPA pursuant to certain of the sections set forth above, Akerna will be required to pay MJA a termination fee of $290,000 and reimburse MJA for its reasonable fees and expenses up to $60,000.

Secured Promissory Note

Concurrently with the SPA, Akerna, Akerna Exchange, and MJA entered into a secured promissory note, dated April 28, 2023 (the "MJA Note") whereby Akerna promises to pay to the order of MJA or its registered assigns the amount of $1,000,000. The MJA Note bears simple interest at the rate of ten percent (10%) per annum from the date of issuance until repayment of the MJA Note. Interest on the MJA Note will be computed on the basis of a 365-day year and actual days elapsed.

The outstanding principal amount of and all accrued but unpaid interest on the MJA Note will be due and payable on April 28, 2024. The MJA Note, or a portion thereof, may be prepaid by the Company at any time without penalty, upon one (1) business day prior written notice from Akerna to MJA, specifying the intended date and amount of repayment. Any payments shall be applied first to accrued interest and then to principal. The MJA Note, including all principal amounts and all accrued and unpaid interest, shall be deemed paid in full upon the consummation of the transactions contemplated under the SPA.

Security Agreement

Pursuant to the MJA Note, Akerna's obligations under the MJA Note are to be secured pursuant to a Security and Pledge Agreement entered by and among Akerna, MJA and the other parties thereto dated April 28, 2023 (the "Security Agreement"). The Security Agreement creates a security interest in all of the personal property of Akerna and certain of its subsidiaries of every kind and description, tangible or intangible, whether currently owned and existing or created or acquired in the future (the "Collateral").

Upon the occurrence of an "Event of Default" under the Security Agreement, the Collateral Agent will have certain rights under the Security Agreement including taking control of the Collateral and, in certain circumstances, selling the Collateral to cover obligations owed to the holders of the MJA Note pursuant to its terms. "Event of Default" under the Security Agreement means (a) Akerna breaches the SPA or any of the Ancillary Documents (as defined in the SPA) and does not cure such breach within ten (10) days after written notice thereof has been given by or on behalf of MJA to Akerna; (b) Akerna files any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of, or relating to, debtors, now or hereafter in effect, or makes any assignment for the benefit of creditors or takes any corporate action in furtherance of any of the foregoing; (c) an involuntary petition is filed against Akerna (unless such petition is dismissed or discharged within ninety (90) days under any bankruptcy statute now or hereafter in effect, or a custodian, receiver, trustee, assignee for the benefit of creditors (or other similar official) is appointed to take possession, custody or control of any property of Akerna; or (d) Akerna is in material breach of any of its representations or covenants in the MJA Note and, in the case of covenants, does not cure such breach within ten (10) days after written notice thereof has been given by or on behalf of MJA to Akerna.

Guaranty

In connection to the MJA Note, certain subsidiaries of Akerna entered into a guaranty agreement with MJA on April 28, 2023 (the "Guaranty Agreement") under which they will guarantee the obligations of the Company under the Security Agreement and the MJA Note.

Waiver

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

Subordination and Intercreditor Agreement

In connection to the New Note Transaction Documents, MJA, Akerna, and HT Investments MA LLC (the "Senior Agent", together with the Holders, the "Senior Creditors"), as collateral agent under the 2021 SPA, each on behalf of the respective Holders, entered into a subordination and intercreditor agreement dated April 28, 2023 (the "Subordination Agreement"), whereby the parties agreed that the payment of any and all obligations, liabilities and indebtedness of every nature of Akerna, its applicable subsidiary and/or affiliates from time to time owed to MJA under the Subordinated Debt Documents (as defined in the Subordination Agreement) will be subordinate and subject in right and time

of payment, to the prior payment in full of all obligations, liabilities and indebtedness of every nature of Akerna, its applicable subsidiary and/or affiliates from time to time owed to any Senior Creditor under the Senior Debt Documents (as defined in the Subordination Agreement).

Akerna and Lender Support Agreements

In connection and concurrently with the execution of the SPA, the executive officers and directors of Akerna who hold shares of Akerna's common stock entered into voting and support agreements with MJA relating to the Sales Transaction (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 certain proposals being presented to Akerna's stockholders in a registration statement on Form S-4 in connection to the SPA and the Agreement and Plan of Merger previously disclosed on January 27, 2023 ("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.

Additionally, each Holder of the 2021 Notes entered into a voting and support agreement with Akerna relating to the Sale Transaction (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.

Amending Agreement

In connection with Akerna entering into the SPA with MJA, Akerna, Akerna Merger Co. and Gryphon Digital Mining Inc. ("Gryphon") entered into a First Amendment to Agreement and Plan of Merger (the "Amending Agreement") which amends the Agreement and Plan of Merger dated January 27, 2023 (the "Merger Agreement") to amend the definition of "MJF Purchaser" thereunder to MJ Acquisition Corp. and pursuant to which Gryphon consents to Akerna entering into the SPA and related documents.

The foregoing descriptions of the SPA, the Akerna Support Agreements, the Lender Support Agreements, the MJA Note, the Security Agreement, the Guaranty Agreement, the Waiver, the Subordination Agreement and the Amending Agreement (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 2.5, 10.1 and 10.5 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 1.02 Termination of a Material Definitive Agreement.

On April 5, 2023, Akerna terminated its securities purchase agreement dated January 27, 2023 (the "**POSaBIT SPA**") by and between Akerna, Akerna Canada Ample Exchange Inc. and POSaBIT Systems Corp. ("**POSaBIT**"). Akerna terminated the POSaBIT SPA pursuant to section 9.01(c)(iii) thereof, because the Board of Directors of Akerna determined that the offer letter of Alleaves Inc. delivered to the Board of Directors on March 17, 2023, which ultimately resulted in the SPA with MJA described in Item 1.01 above, was or was likely to result in a "Superior Offer" under the terms of the POSaBIT SPA and therefore the Board of Directors had a fiduciary obligation to Akerna's securityholders to terminate the POSaBIT SPA to pursue that offer. As a result of the termination, Akerna owes POSaBIT a termination fee of $140,000 and payment of up to $60,000 in reasonable fees and expenses of POSaBIT within 10 Business Days of receipt of reasonable documentation supporting such fees and expenses.

The material terms of the POSaBIT SPA were described in Item 1.01 of Akerna's Current Report on Form 8-K as filed with the SEC on January 27, 2023, which disclosure is incorporated herein by reference.

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

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

Item 7.01. Regulation FD Disclosure.

On April 28, 2023, Akerna issued a press release announcing the SPA. 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 April 28, 2023, by and among Akerna, Akerna Exchange and MJA
2.2	Form of Voting and Support Letter, dated April 28, 2023, by and among Akerna and High Trail Investments ON LLC
2.3	Form of Voting and Support Letter, dated April 28, 2023, by and among Akerna and Alto Opportunity Master Fund, SPC –Segregated Master Portfolio B
2.4	Form of Voting and Support Agreement, dated April 28, 2023, by and among MJA and each of the parties named therein
2.5	First Amendment to Agreement and Plan of Merger dated April 28, 2023 by and among Akerna, Akerna Merger Co. and Gryphon Digital Mining Inc.
10.1*	Form of Secured Promissory Note, dated April 28, 2023, by and among Akerna, Akerna Exchange, and MJA
10.2*	Form of Security and Pledge Agreement, by and among Akerna, MJA and the other parties thereto dated April 28, 2023
10.3	Form of Guaranty Agreement, by and among certain subsidiaries of Akerna and MJA, dated April 28, 2023
10.4	Subordination and Intercreditor Agreement, by and among MJA, Akerna, and HT Investments MA LLC, dated April 28, 2023
10.5	Waiver, by and among Akerna and certain note holders, dated April 28, 2023

99.1	Press Release of Akerna and MJA dated April 28, 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, Gryphon and MJA. 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 are urged to read these materials when they become available because they will contain important information about Akerna 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 MJA 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 transaction; 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 MJA to consummate the proposed transactions, as applicable; (iii) risks related to Akerna's ability to manage its operating expenses and its expenses associated with the proposed transaction pending closing; (iv) risks related to potential lawsuits regarding Akerna's determination to terminate its agreement with POSaBIT; (v) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed transaction; (vi) 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; (vii) risks related to the market price of Akerna's common stock relative to the exchange ratio; (viii) unexpected costs, charges or expenses resulting from either or both of the proposed transaction; (ix) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed transaction; (x) risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance its business plan; and (xi) risks associated with the possible failure to realize certain anticipated benefits of the proposed transaction, 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, 2022 filed with the SEC, and in other filings that Akerna makes and will make with the SEC in connection with the proposed transaction, 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: May 1, 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

MJ ACQUISITION CORP.

dated as of

April 28, 2023

SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement (this "**Agreement**"), dated as of April 28, 2023, is entered into among Akerna Corp., a Delaware corporation ("**Seller**"), Akerna Canada Ample Exchange Inc., an Ontario corporation ("**ExchangeCo**"), and MJ Acquisition Corp., a Delaware 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;

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**"); and

WHEREAS, as partial consideration for its acquisition of the Membership Interests and Shares, Buyer has agreed, contemporaneous herewith, to extend the Akerna Loan;

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.

"**Akerna Loan**" means a loan by Buyer to Seller in the principal amount of $1,000,000 to be evidenced by a note and security documents in substantially the form attached hereto as Exhibit B.

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

"**Ancillary Documents**" means the 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 Denver, Colorado, USA 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 HLB Gravier, LLC.

"**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.

"**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.

"**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).

"**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 September 29, 2023; *provided*, *however*, if the SEC has not declared effective under the Securities Act the Form S-4 Registration Statement by August 29, 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 Five Million Dollars ($5,000,000), subject to adjustment pursuant to Section 2.04 hereof (the "**Purchase Price**"), consisting of a credit for the amount of the Akerna Loan with the balance to be cash.

(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; 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 cash amount of 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**"); and

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

The net amount after giving effect to the adjustments listed above (and exclusive of the the Akerna Loan which will be deemed repaid in full at Closing pursuant to its terms) 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, and Estimated Closing Transaction Expenses, 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, and Estimated Closing Transaction Expenses (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, and Closing Transaction Expenses, 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, and Closing Transaction Expenses (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 (exclusive of the Akerna Loan); and

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

(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 PremierCounsel, LLP, 201 Spear Street, Suite 1100, San Francisco, CA 94105 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 2022, 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 "**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 Groupor 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) to not (and cause its Representatives to not) disparage, criticize, defame or impugn the character of Buyer or its Representatives in any fashion or otherwise take any action which could reasonably be expected to adversely affect Buyer or its Representatives' personal or professional reputations;

(j) 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

(k) 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. 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 forty (40) 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 twenty (20) 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 forty (40) 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 twenty (20) 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). For the avoidance of doubt, Seller and ExchangeCo and not Buyer shall be responsible for all payments under the agreements referred to in Section 3.23(n) of the Disclosure Schedules.

(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 the requirements of Section 2.03(b), each of Seller and ExchangeCo shall have performed and complied in all respects, and *provided further*, 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.

(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 $290,000 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:

MJ Acquisition Corp.
16192 Coastal Highway
Lewes, DE 19958
Attn: Chief Executive Officer

with a copy to:

PremierCounsel, LLP
201 Spear Street, Suite 1100
San Francisco, CA 94105
Attention: William Kushner
Email: wkushner@premiercounsel.com

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

MJ ACQUISITION CORP.

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative

Exhibit 2.2

[AKERNA LETTERHEAD]

April 28, 2023

High Trail Investments ON LLC
c/o High Trail Capital LP
[***]
Attention: [***]

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 MJ Acquisition Co ("**MJ Acquisition Co**"), 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) MJ Acquisition Co or a Subsidiary of MJ Acquisition Co will acquire all of the issued and outstanding membership interests of MJ Freeway, LLC, a Colorado limited liability company, from KERN and (ii) MJ Acquisition Co 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 MJ Acquisition Co 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.

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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 Closingand (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 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 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 November 15, 2023.[2]

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.

[2] There is no defined term "Effective Time"

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.

[***]
[***]
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. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover it expenses, including reasonable attorneys' fees and costs, from the non-prevailing party.

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.

21. No Third Party Beneficiary

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.

[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:

HIGH TRAIL INVESTMENTS ON LLC

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

Address:

Wire Instructions:

Signature Page to Voting and Support Agreement

AKERNA CORP.

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

Signature Page to Voting and Support Agreement

[AKERNA LETTERHEAD]

April 28, 2023

Alto Opportunity Master Fund, SPC –Segregated Master Portfolio B
c/o Ayrton Capital LLC
[***]
Attention: [***]

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 MJ Acquisition Co ("**MJ Acquisition Co**"), and (ii) that certain Exchange Agreement, dated as of the date hereof (the "**Exchange Agreement**"), by and among KERN and Alto Opportunity Master Fund, SPC –Segregated Master Portfolio B (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) MJ Acquisition Co or a Subsidiary of MJ Acquisition Co will acquire all of the issued and outstanding membership interests of MJ Freeway, LLC, a Colorado limited liability company, from KERN and (ii) MJ Acquisition Co 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 MJ Acquisition Co 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 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 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 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 November 15, 2023.[1]

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.

1 There is no defined term "Effective Time"

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.

[***]
[***]
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. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover it expenses, including reasonable attorneys' fees and costs, from the non-prevailing party.

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.

21. No Third Party Beneficiary

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.

**[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:

ALTO OPPORTUNITY MASTER FUND, SPC - SEGREGATED MASTER PORTFOLIO B

By: /s/ Waqas Khatri
Name: Waqas Khatri
Title:

Address:

Wire Instructions:

Signature Page to Voting and Support Agreement

AKERNA CORP.

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

Signature Page to Voting and Support Agreement

Exhibit 2.4

VOTING AND SUPPORT AGREEMENT

THIS AGREEMENT (this "**Agreement**") is made as of the 27 day of April, 2023.

BETWEEN:

THE PERSONS LISTED ON APPENDIX A HERETO, (collectively, the "**Stockholders**" and each individually a "**Stockholder**")

- and -

MJ ACQUISITION CORP., a Delaware corporation ("**MJA**")

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 MJA are entering into a Securities Purchase Agreement (the "**SPA**") pursuant to which (and subject to the terms and conditions set forth therein) (i) MJA or a Subsidiary of MJA will acquire all of the issued and outstanding membership interests of MJ Freeway, LLC, a Colorado limited liability company, from KERN and (ii) MJA 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 MJA 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 MJA) 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 MJA, 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 MJA 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 MJA in accordance with Section 5.1011 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 MJA as follows, and acknowledges that MJA 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 MJA, constitutes a legal, valid and binding agreement enforceable by MJA 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 MJA

MJA 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. MJA 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 MJA and constitutes a legal, valid and binding agreement enforceable by the Stockholder against MJA 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 MJA of this Agreement or the compliance by MJA 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 MJA; (ii) any contract to which MJA is a party or by which MJA 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 MJA 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 MJA, threatened against MJA or any of its Affiliates that would adversely affect in any manner the ability of MJA 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 MJA) 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 MJA 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

MJA 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 MJA 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 MJA, 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 MJA and to the filing of this Agreement as an exhibit to any filing by MJA with the United States Securities and Exchange Commission.

5.5 Assignment

Subject to prior written notice to the Stockholders, MJA may assign all or part of its rights under this Agreement to an Affiliate of MJA. 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 MJA, 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 MJA, addressed to it at:

MJA Acquisition Corp.
16192 Coastal Highway
Lewes, DE 19958
Attn: Legal Department
Email: legal@MJA.com

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

PremierCounsel, LLP
201 Spear Street, Suite 1100
San Francisco, CA 94105
Attention: William Kushner
Email: wkushner@premiercounsel.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. In the event of any dispute arising under this Agreement, the prevailing party shall be entitled to recover it expenses, including reasonable attorneys' fees and costs, from the non-prevailing party.

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.

5.16. No Third Party Beneficiary

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.

[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.

/s/ Jessica Billingsley
Jessica Billingsley

/s/ L. Dean Ditto
L. Dean Ditto

/s/ Ray Thompson
Ray Thompson

/s/ David McCullough
David McCullough

/s/ Scott Sozio
Scott Sozio

/s/ Matthew Kane
Matthew Kane

/s/ Tahira Rehmatullah
Tahira Rehmatullah

/s/ Barry Fishman
Barry Fishman

JESSICA BILLINGSLEY LIVING TRUST

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Trustee

SEAM CAPITAL, LLC

By: /s/ Matthew Kane
Name: Matthew Kane
Title: Managing Partner

MJ ACQUISITION CORP.

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative

FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER

This First Amendment to Agreement and Plan of Merger (this "Amendment"), is dated as of April 28, 2023, by and among Akerna Corp., a Delaware corporation ("Acquiror"), Akerna Merger Co., a Delaware corporation and a wholly owned subsidiary of Acquiror ("Merger Sub"), and Gryphon Digital Mining, Inc., a Delaware corporation (the "Company"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Merger Agreement (as defined below).

RECITALS

A. WHEREAS, Acquiror, Merger Sub and the Company are parties to an Agreement and Plan of Merger, dated as of January 27, 2023 (the "Merger Agreement");

B. WHEREAS, in connection with the entry by Acquiror, Merger Sub and the Company into the Merger Agreement, Acquiror also entered into a Securities Purchase Agreement (the "POSaBIT SPA") with Akerna Canada Ample Exchange Inc., an Ontario corporation and a wholly owned subsidiary of Acquiror ("Akerna Exchange"), and POSaBIT Systems Corporation, a British Columbia corporation ("POSaBIT"), pursuant to which Acquiror agreed to sell to POSaBIT all of the membership interests of its wholly owned subsidiary MJ Freeway, LLC, a Colorado limited liability company ("MJF"), and Akerna Exchange agreed to sell to POSaBIT all of the outstanding capital stock of its wholly owned subsidiary, Ample Organics Inc., an Ontario corporation (" Ample"), for $4,000,000 in cash, on the terms and subject to the conditions set forth in the POSaBIT SPA

C. WHEREAS, on March 22, 2023, Alleaves, Inc., a Delaware corporation ("Alleaves") submitted an unsolicited proposal to Acquiror to acquire MJF and Ample for $5,000,000 in cash (the "Alleaves Proposal");

D. WHEREAS, on March 26, 2023, the Board of Directors of Acquiror determined that the Alleaves Proposal constituted a Superior Offer (as defined in the POSaBIT SPA), and Acquiror terminated the POSaBIT SPA in order to accept the Alleaves Proposal;

E. WHEREAS, on the date hereof, Acquiror, Akerna Exchange and MJ Acquisition Corp. a Delaware corporation ("MJA"), with funding in part from Alleaves, are entering into a definitive Securities Purchase Agreement (the "MJA SPA"), pursuant to which MJA would acquire MJF and Ample, on the terms and subject to the conditions set forth therein; and

F. WHEREAS, in connection with the entry Acquiror, Akerna Exchange and MJA into the MJA SPA, Acquiror, Merger Sub and the Company desire to amend certain provisions of the Merger Agreement to substitute the MJA SPA and the transactions contemplated thereby for the POSaBIT SPA and the transactions contemplated thereby.

AGREEMENT

In consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Parties agree as follows:

1. Modification to Section 1.1. The definition of "MJF Purchaser" in Section 1.1 of the Merger Agreement is hereby amended and restated in its entirety to read as follows:

"MJF Purchaser" meansMJ Acquisition Corp., a Delaware corporation.

2. Consent to MJA SPA and Sale Transaction Agreements . By executing and delivering this Amendment, the Company hereby consents to the entry by Acquiror and Akerna Exchange into the Alleaves SPA and the other Sale Transaction Agreements contemplated thereby for all purposes under the Merger Agreement, including Section 6.1 thereof.

3. Amendment and Ratification. Except as specifically amended hereby, all terms, conditions, covenants, representations, and warranties contained in the Merger Agreement shall remain in full force and effect and shall be binding upon the Parties.

4. Entire Agreement; Assignment. The Merger Agreement, as amended hereby and 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 Amendment 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 Amendment not in accordance with the terms of this Section 4 shall be void.

5. Parties in Interest. This Amendment shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns, and nothing in this Amendment, 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 Amendment.

6. Governing Law. This Amendment and all disputes or controversies arising out of or relating to this Amendment, 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.

7. Counterparts; Electronic Signatures. This Amendment 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 Amendment by facsimile, e-mail, or scanned pages shall be effective as delivery of a manually executed counterpart to this Amendment.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date first written above.

AKERNA CORP.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley

Title: Chief Executive Officer

AKERNA MERGER CO.

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

GRYPHON DIGITAL MINING, INC.

By: /s/ Rob Chang
Name: Rob Chang
Title: Chief Executive Officer

[SIGNATURE PAGE TO FIRST AMENDMENT TO AGREEMENT AND PLAN OF MERGER]

Exhibit 10.1

SECURED PROMISSORY NOTE

$1,000,000.00 Issued on April 28, 2023

This Secured Promissory Note (the "***Note***") is being issued in connection with the execution of that certain Securities Purchase Agreement (the "***SPA***") dated even date herewith between Akerna Corp., a Delaware corporation (the "**Company**"), Akerna Canada Ample Exchange Inc., an Ontario corporation ("***ExchangeCo***"), and MJ Acquisition Corp., a Delaware corporation (or its designee) ("***MJA***").

1. Principal and Interest.

1.1 Amount. For value received, the Company hereby promises to pay to the order of MJA, or its registered assigns (collectively, the "***Holder***") the amount of One Million Dollars ($1,000,000.00) (the "**Loan**").

1.2 Interest. This Note shall bear simple interest at the rate of ten percent (10%) per annum from the date of issuance until repayment of the Note. Interest on this Note shall be computed on the basis of a 365-day year and actual days elapsed.

1.3 Maturity Date. The outstanding principal amount of and all accrued but unpaid interest on this Note (i.e., with respect to all Tranches) shall be due and payable on April 28, 2024 (the "***Maturity Date***").

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

1.5 Deemed Payment. This Note, including all principal amounts and all accrued and unpaid interest, shall be deemed paid in full upon the consummation of the transactions contemplated under the SPA.

1.6 Priority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. General Provisions.

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

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

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

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

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

6.6 Notices. Unless otherwise provided, for a notice or other communications under this Note to be valid, it must be in writing and delivered via email or by globally recognized express delivery service (with a required email copy, receipt of which need not be acknowledged) to the other party at the address listed after its signature on the signature page hereto. Any such notice or communication will be deemed to have been delivered and received (1) in the case of email, on the date that the recipient

acknowledges having received the email, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section and (2) in the case of a globally recognized express delivery service, on the business day that receipt by the addressee is confirmed pursuant to the service's systems. Either party may update this address for notice by giving the other party written notice of the new address.

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

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

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

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

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

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

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

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

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

[remainder of page intentionally left blank]

The parties have executed this **Secured Promissory Note** as of the date first noted above.

Akerna Corp.

By: /s/ Jessica Billingsley
Name: Jessica Billingsley
Title: Chief Executive Officer
Address:
1550 Larimer Street #246
Denver, CO 80202

Email: jlb@akerna.com

MJ Acquisition Corp.

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative
Address:
16192 Coastal Highway
Lewes, DE 19958
Email: legal.mjac@gmail.com

Secured Promissory Note
-Signature Page-

SECURITY AND PLEDGE AGREEMENT

SECURITY AND PLEDGE AGREEMENT, dated as April 28, 2023 (this "**Agreement**"), made by Akerna Corp., a Delaware corporation, with offices located at 1550 Larimer Street, #246, Denver, CO 80202 (the "**Company**"), and each of the undersigned direct and indirect Subsidiaries of the Company from time to time (each a "**Grantor**" and together with the Company, collectively, the "**Grantors**"), in favor of MJ Acquisition Corp. (the "**Secured Party**").

W I T N E S S E T H:

WHEREAS, the Company is party to that certain Secured Promissory Note, dated as of April 28, 2023 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**Note"**) pursuant to which the Company received a loan from the Secured Party;

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

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

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

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

SECTION 1. Definitions.

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

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

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

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

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

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

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

"**Closing Date**" means the date hereof.

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

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

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

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

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

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

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

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

"**Domestic Subsidiary**" means any Subsidiary other than a Foreign Subsidiary.

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

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

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

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

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

"**GAAP**" means U.S. generally accepted accounting principles consistently applied.

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

"**Guaranteed Obligations**" shall have the meaning set forth in Section 2 of each Guaranty.

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

"**Guaranty**" or "**Guaranties**" shall have the meaning set forth in the recitals hereto.

"**HT Investments**" means HT Investments MA LLC.

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

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

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

"**Licenses**" means, collectively, the Copyright Licenses, the Trademark Licenses and the Patent Licenses.

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

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

"**Obligations**" shall have the meaning set forth in Section 3 of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Grant of Security Interest.

(a) As collateral security for the due and punctual payment and performance of all of the Obligations, as and when due, each Grantor hereby pledges and assigns to the Secured Party, and grants to the Secured Party, a continuing security interest in, all personal property and assets of such Grantor, wherever located and whether

now or hereafter existing and whether now owned or hereafter acquired, of every kind, nature and description, whether tangible or intangible (collectively, the "**Collateral**"), including, without limitation, the following:

(i) all Accounts;

(ii) all Chattel Paper (whether tangible or Electronic Chattel Paper);

(iii) all Commercial Tort Claims, including, without limitation, those specified on Schedule VI hereto;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles (including, without limitation, all Payment Intangibles);

(viii) all Goods;

(ix) all Instruments (including, without limitation, all Promissory Notes and each certificated Security);

(x) all Inventory;

(xi) all Investment Property (and, regardless of whether classified as Investment Property under the Code, all Pledged Equity, Pledged Operating Agreements and Pledged Partnership Agreements);

(xii) all Intellectual Property and all Licenses;

(xiii) all Letter-of-Credit Rights;

(xiv) all Pledged Accounts, all cash and other property from time to time deposited therein, and all monies and property in the possession or under the control of the Secured Party or any Affiliate, representative, agent or correspondent of the Secured Party;

(xv) all Supporting Obligations;

(xvi) all other tangible and intangible personal property of each Grantor (whether or not subject to the Code), including, without limitation, all Deposit Accounts and other accounts and all cash and all investments therein, all proceeds, products, offspring, accessions, rents, profits, income, benefits, substitutions and replacements of and to any of the property of any Grantor described in the preceding clauses of this Section 2(a) (including, without limitation, any proceeds of insurance thereon and all causes of action, claims and warranties now or hereafter held by each Grantor in respect of any of the items listed above), and all books, correspondence, files and other Records, including, without limitation, all tapes, desks, cards, Software, data and computer programs in the possession or under the control of any Grantor or any other Person from time to time acting for any Grantor, in each case, to the extent of such Grantor's rights therein, that at any time evidence or contain information relating to any of the property described in the preceding clauses of this Section 2(a) or are otherwise necessary or helpful in the collection or realization thereof; and

(xvii) all Proceeds, including all Cash Proceeds and Noncash Proceeds, and products of any and all of the foregoing Collateral;

in each case howsoever any Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise).

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

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

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

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

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

(a) (i) the payment by the Company and each Grantor, as and when due and payable (by scheduled maturity, required prepayment, acceleration, demand or otherwise), of all amounts from time to time owing by it in respect of the Transaction Documents, and (ii) in the case of the Guarantors, the payment by such Guarantors, as and

when due and payable of all Guaranteed Obligations under the Guaranties, including, without limitation, in both cases, (A) all principal of, interest, make-whole and other amounts due and payable under the Note (including, without limitation, all interest, make-whole and other amounts that accrue after the commencement of any Insolvency Proceeding of any Grantor, whether or not the payment of such interest is enforceable or is allowable in such Insolvency Proceeding), and (B) all fees, interest, premiums, penalties, contract causes of action, costs, commissions, expense reimbursements, indemnifications and all other amounts due or to become due under the Transaction Documents; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Further Assurances. Each Grantor will, at its expense, at any time and from time to time, promptly execute and deliver all further instruments and documents and take all further action that the Secured Party may reasonably request in order to: (i) perfect and protect the security interest of the Secured Party created hereby; (ii) enable the Secured Party to exercise and enforce its rights and remedies hereunder in respect of the Collateral, including, without limitation, the Controlled Accounts; or (iii) otherwise effect the purposes of this Agreement, including, without limitation: (A) marking conspicuously all Chattel Paper and each License and, at the request of the Secured Party, each of its Records pertaining to the Collateral with a legend, in form and substance satisfactory to the Secured Party, indicating that such Chattel Paper, License or Collateral is subject to the security interest created hereby, (B) delivering and pledging to the Secured Party each Promissory Note, Security (subject to the limitations set forth in Section 2), Chattel Paper or other Instrument, now or hereafter owned by any Grantor, duly endorsed and accompanied by executed instruments of transfer or assignment, all in form and substance satisfactory to the Secured Party, (C) executing and filing (to the extent, if any, that any Grantor's signature is required thereon) or authenticating the filing of, such financing or continuation statements, or amendments thereto, as may be necessary or that the Secured Party may reasonably request in order to perfect and preserve the security interest created hereby, (D) furnishing to the Secured Party from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral in each case as the Secured Party may reasonably request, all in reasonable detail, (E) if any Collateral shall be in the possession of a third party, notifying such Person of the Secured Party's security interest created hereby and obtaining a written acknowledgment from such Person, in

form and substance reasonably satisfactory to the Secured Party, that such Person holds possession of the Collateral for the benefit of the Secured Party, (F) if at any time after the date hereof, any Grantor acquires or holds any Commercial Tort Claim, promptly notifying the Secured Party in a writing signed by such Grantor setting forth a brief description of such Commercial Tort Claim and granting to the Secured Party a security interest therein and in the proceeds thereof, which writing shall incorporate the provisions hereof and shall be in form and substance satisfactory to the Secured Party, (G) upon the acquisition after the date hereof by any Grantor of any motor vehicle or other Equipment subject to a certificate of title or ownership (other than a motor vehicle or Equipment that is subject to a purchase money security interest), causing the Secured Party to be listed as the lienholder on such certificate of title or ownership and delivering evidence of the same to the Secured Party in accordance with Section 5(j) hereof; and (H) taking all actions required by the Code or by other law, as applicable, in any relevant Code jurisdiction, or by other law as applicable in any foreign jurisdiction.

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

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

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

(e) Insurance.

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

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

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

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

(f) Provisions Concerning the Accounts and the Licenses.

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

(ii) Each Grantor will (except as otherwise provided in this subsection (f)), continue to collect, at its own expense, all amounts due or to become due under the Accounts. In connection with such collections, any Grantor may (and, at the Secured Party's direction, will) take such action as any Grantor or the Secured Party may deem necessary or advisable to enforce collection or performance of the Accounts; provided, however, that the Secured Party shall have the right at any time following the occurrence and during the continuance of an Event of Default to notify the Account Debtors or obligors under any Accounts of the assignment of such Accounts to the Secured Party and to direct such Account Debtors or obligors to make payment of all amounts due or to become due to any Grantor thereunder directly to the Secured Party or its designated agent and, upon such notification and at the expense of any Grantor and to the extent permitted by applicable law, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as any Grantor might have done. After receipt by any Grantor of a notice from the Secured Party that the Secured Party has notified, intends to notify, or has enforced or intends to enforce any Grantor's rights against the Account Debtors or obligors under any Accounts as referred to in the proviso to the immediately preceding sentence, (A) all amounts and proceeds (including Instruments) received by any Grantor in respect of the Accounts shall be received in trust for the benefit of the Secured Party hereunder, shall be segregated from other funds of any Grantor and shall be forthwith paid over to the Secured Party in the same form as so received (with any necessary endorsement) to be applied as specified in Section 7(b) hereof, and (B) no Grantor will adjust, settle or

compromise the amount or payment of any Account or release wholly or partly any Account Debtor or obligor thereof or allow any credit or discount thereon. In addition, upon the occurrence and during the continuance of an Event of Default, the Secured Party may (in its sole and absolute discretion) direct any or all of the banks and financial institutions with which any Grantor either maintains a Deposit Account or a lockbox (including, without limitation, any Controlled Account) or deposits the proceeds of any Accounts to send immediately to the Secured Party by wire transfer (to such deposit account as the Secured Party shall specify, or in such other manner as the Secured Party shall direct) all or a portion of such securities, cash, investments and other items held by such institution. Any such securities, cash, investments and other items so received by the Secured Party shall be applied as specified in accordance with Section 7(b) hereof.

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

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

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

(g) Transfers and Other Liens.

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

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

(iii) Reserved.

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

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

(h) Intellectual Property.

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

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

(i) Pledged Accounts.

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

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

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

(j) Motor Vehicles.

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

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

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

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

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

(l) Inspection and Reporting. Each Grantor shall permit the Secured Party, or any agent or representatives thereof or such professionals or other Persons as the Secured Party may designate (at Grantors' sole cost and expense), during business hours and upon reasonable, prior written notice, (i) to examine and make copies of and

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

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

SECTION 6. Additional Provisions Concerning the Collateral.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

during the continuance of an Event of Default), execute and deliver on behalf of such Grantor, one or more instruments of assignment of the Intellectual Property (or any application or registration thereof), in form suitable for filing, recording or registration in any country.

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

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

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

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

SECTION 8. Indemnity and Expenses.

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

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

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

SECTION 10. Miscellaneous.

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

(b) No failure on the part of the Secured Party to exercise, and no delay in exercising, any right reasonably hereunder or under any of the other Transaction Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right reasonably preclude any other or further exercise thereof or the exercise of

any other right. The rights and remedies of the Secured Party provided herein and in the other Transaction Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Secured Party under any of the other Transaction Documents against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any of the other Transaction Documents against such party or against any other Person, including but not limited to, any Grantor.

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

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

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

(f) Governing Law; Jurisdiction; Jury Trial.

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

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim, defense or objection that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under Section 6.6 of the Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Secured Party from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Secured Party.

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

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

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

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

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

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

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

GRANTORS:

AKERNA CORP.

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

AKERNA SERVICES, LLC

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

MJ FREEWAY, LLC

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

ACCEPTED BY:

MJ Acquisition Corp.,
as Secured Party

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative

EXHIBIT A

FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, modified, supplemented, renewed, restated or replaced from time to time, this "**IP Security Agreement**"), dated April 28, 2023, is made by the Persons listed on the signature pages hereof (collectively, the "**Grantors**") in favor of MJ Acquisition Corp. (the "**Secured Party**"). All capitalized terms not otherwise defined herein shall have the meanings respectively ascribed thereto in the Note (as defined below).

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

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

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

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

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

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

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

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

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

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

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or

breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

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

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

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

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

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

SECTION 6. Governing Law; Jurisdiction; Jury Trial.

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

(ii) Each Grantor hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or under any of the other Transaction Documents or with any transaction contemplated hereby or thereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim, defense or objection that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under Section 6.6 of the Note and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Secured Party from bringing suit or taking other legal action against any Grantor in any other jurisdiction to collect on a Grantor's obligations or to enforce a judgment or other court ruling in favor of the Secured Party.

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

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

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

GRANTORS:

AKERNA CORP.

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

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

AKERNA SERVICES, LLC

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

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

MJ FREEWAY, LLC

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

Address for Notices:

1550 Larimer Street, #246
Denver CO, 80202

GUARANTY

This GUARANTY, dated as of April 28, 2023 (this "**Guaranty**"), is made by each of the undersigned (each a "**Guarantor**", and collectively, the "**Guarantors**"), in favor of MJ Acquisition Corp. (the "**Secured Party**").

W I T N E S S E T H:

WHEREAS, Akerna Corp., a Delaware corporation with offices located at 1550 Larimer Street, #246, Denver, CO 80202 (the "**Company**"), is party to that certain Secured Promissory Note, dated as of April 28, 2023 (as amended, restated, extended, replaced or otherwise modified from time to time, the "**Note")** pursuant to which the Company received a loan from the Secured Party;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Guaranty.

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

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

SECTION 3. Guaranty Absolute; Continuing Guaranty; Assignments.

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

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

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

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

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

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

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

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

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

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

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

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

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

guarantor or any other Person or any Collateral, and (b) any defense based on any right of set-off or counterclaim against or in respect of the Guaranteed Obligations of such Guarantor hereunder. Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Secured Party to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Transaction Party or any of its Subsidiaries now or hereafter known by the Secured Party.

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

SECTION 6. Representations, Warranties and Covenants.

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

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

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

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

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

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

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

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

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

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

SECTION 8. Limitation on Guaranteed Obligations.

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

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

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

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

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

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

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

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

SECTION 12. Taxes.

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

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

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

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

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

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

(c) If any Guarantor fails to perform any of its obligations under this Section 12, such Guarantor shall indemnify the Secured Party for any taxes, interest or

penalties that may become payable as a result of any such failure. The obligations of the Guarantors under this Section 12 shall survive the termination of this Guaranty and the payment of the Obligations and all other amounts payable hereunder.

SECTION 13. Indemnification.

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

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

SECTION 14. Miscellaneous.

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

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

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

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

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

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

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

SECTION 15. Currency Indemnity.

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

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

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

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

GUARANTORS:

AKERNA SERVICES, LLC

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

MJ FREEWAY, LLC

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

[Signatures continue on following page]

ACCEPTED BY:

MJ Acquisition Corp.,
as Secured Party

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative

SUBORDINATION AND INTERCREDITOR AGREEMENT

This SUBORDINATION AND INTERCREDITOR AGREEMENT (as the same may be amended, modified and/or restated from time to time, this "**Agreement**") is entered into as of April 28, 2023, by and among (a) HT Investments MA LLC, as collateral agent under the Security Agreement (as defined below) (the "**Senior Agent**"), each on behalf of the respective Senior Lenders (as hereinafter defined) (such Senior Lenders and the Senior Agent, together, the "**Senior Creditors**"), (b) the Subordinated Creditor (as hereinafter defined), and (c) Akerna Corp. (the "**Borrower**", and together with each other Subsidiary and/or Affiliate that becomes obligated to repay indebtedness outstanding under any of the Senior Credit Agreements, each individually a "**Credit Party**" and collectively, the "**Credit Parties**").

W I T N E S S E T H:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Enforcement Action**" means (a) to take from or for the account of any Obligor or any guarantor of the Subordinated Debt, by set-off or in any other manner, the

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

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

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

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

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

"**Insolvency Proceeding**" means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Code with respect to a Person;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership or interim receivership, liquidation or other similar case or proceeding with respect to a Person or with respect to a material portion of its assets;

(c) any liquidation, dissolution, or winding up of a Person whether voluntary or involuntary and whether or not involving insolvency or bankruptcy;

(d) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of a Person; or

(e) any foreign law equivalent of the foregoing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Subordinated Debt**" means all obligations, liabilities and indebtedness of every nature of the Obligors from time to time owed to the any Subordinated Creditor under the Subordinated Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees,

legal fees, premium, indemnities, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of an Insolvency Proceeding under the Bankruptcy Code together with any interest, fees, premiums, costs and expenses accruing thereon after the commencement of an Insolvency Proceeding, without regard to whether or not such interest, fees, premiums, indemnities, costs and expenses are an allowed claim.

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

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

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

2. **Subordination and Standstill**.

2.01 **Subordination of Subordinated Debt and Liens to Senior Debt**.

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

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

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

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

2.02 **Obligor Liquidation, Dissolution, Bankruptcy**.

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

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

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

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

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

(c) If any Obligor shall be subject to any Insolvency Proceeding and the Senior Agent or any Senior Creditor shall desire to permit (or not object to) the use of cash collateral (within the meaning of Section 363 of the Bankruptcy Code), to provide any such Obligor with financing under Section 363 or Section 364 of the Bankruptcy Code (or any similar provision under the law applicable to any Insolvency Proceeding) or to permit (or not object to) the provision of such financing by any third party (collectively, "**DIP Financing**"), including to be secured by all or any portion of the Collateral, then Subordinated Creditor will be deemed to have consented to such use of cash collateral and/or DIP Financing, and agrees that it will not raise any objection to such use of cash collateral and/or DIP Financing or request adequate protection (other

than adequate protection in the form of, if the Senior Agent and/or Senior Creditors are granted adequate protection in the form of a Lien, a Lien that is subordinated to the Lien of the Senior Agent and the Senior Creditors and/or to the lien of the provider of such DIP Financing at least to the extent set forth in this Agreement) or any other relief in connection with its or their interest in any such Collateral and hereby otherwise waives any right it or the Subordinated Creditor may otherwise have to adequate protection of its or their interest in the Collateral; provided, that the Subordinated Creditor retain a Lien on the Collateral to the same extent and with the same priority as existed prior to the commencement of such Insolvency Proceeding and subject in all respects to the terms set forth herein. Subordinated Creditor hereby agrees that the Liens of any Subordinated Creditor in the Collateral shall be subordinated to the liens securing such DIP Financing (and all obligations relating thereto) to the extent and upon the terms and conditions specified in this Agreement. Until the Senior Debt has been Paid in Full, without the Senior Agent's prior written consent to the contrary, Subordinated Creditor agrees that neither it nor any Subordinated Creditor shall, directly or indirectly propose to, seek to provide to, otherwise support, or enter into, any DIP Financing with any Obligor.

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

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

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

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

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

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

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

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

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

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

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

2.07 **Sale, Transfer or other Disposition of Subordinated Debt**.

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

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

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

> This agreement and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Subordination and Intercreditor Agreement (the "**Intercreditor Agreement**") dated as of April 28, 2023 by and among HT INVESTMENTS MA LLC (the "**Senior Agent**"), the Subordinated Creditor and Akerna Corp. (the "**Borrower**", and together with the other credit parties party thereto from time to time, each individually a "**Credit Party**" and collectively, the "**Credit Parties**"), to the indebtedness (including interest) owed by the Credit Parties pursuant to, and/or in connection with, those certain Senior Debt Documents among the Borrower, the other Credit Parties thereto, the Senior Agent and the lenders from time to time party thereto, as such Senior Debt Documents have been and hereafter may be amended, restated, extended, restructured, refinanced, supplemented or otherwise modified from time to time in accordance with the terms of the Intercreditor Agreement and to indebtedness refinancing the indebtedness under each of those agreements from time to time as permitted by the Intercreditor Agreement; and each holder of this [instrument] [agreement], by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this document, the terms of the Intercreditor Agreement shall govern and control.

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

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

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

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

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

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

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

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

3. **Modifications**.

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

3.02 **Modifications to Subordinated Debt Documents**.

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

4. **[Reserved.]**

5. **Bailee for Perfection**.

(a) The Senior Agent and the Subordinated Creditor each agree to hold or control that part of the Collateral that is in its possession or control (or in the possession or control of its agents or bailees), to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC, other applicable law or foreign law equivalent (such Collateral being referred to as the "**Pledged Collateral**"), as bailee and as a non-fiduciary agent for the Subordinated Creditor or the Senior Agent, as applicable (such bailment and agency being intended, among other things, to satisfy the requirements of Sections 8-301(a)(2), 9-313(c), 9-104, 9-105, 9-106, and 9-107 of the

UCC or any foreign law equivalent), solely for the purpose of perfecting the security interest granted on the Collateral under the Subordinated Debt Documents or the Senior Debt Documents, as applicable, subject to the terms and conditions of this Section 5. Unless and until the Senior Debt has been Paid in Full, Subordinated Creditor agrees to promptly notify the Senior Agent of any Pledged Collateral held by it or by Subordinated Creditor, and, promptly upon the request of the Senior Agent, Subordinated Creditor agrees to deliver to the Senior Agent any such Pledged Collateral held by it, together with any necessary endorsements (or otherwise allow the Senior Agent to obtain control of such Pledged Collateral), with such cost and expense incurred in connection therewith shall be added to the Subordinated Debt.

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

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

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

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

6. **Representations and Warranties**.

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

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

7. **Subrogation; Recovery**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. **Modification**. Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be

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

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

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

Notices shall be addressed as follows:

If to the Senior Agent or any other Senior Creditor.

HT INVESTMENTS MA LLC
1550 Larimer Street, #246
Denver, CO 80202
Attention:
E-Mail:

If to Subordinated Creditor.

MJ Acquisition Corp.
16192 Coastal Highway
Lewes, DE 19958
Attention: Legal Department
E-Mail: legal.mjac@gmail.com

If to any Obligor:

Akerna Corp.
1550 Larimer Street, #246
Denver CO, 80202
Attention: Jessica Billingsley
E-Mail: jlb@akerna.com

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with thisSection 12.

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

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

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

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

17. **Counterparts**. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart. Delivery of an executed signature page of this Agreement by facsimile transmission or email shall be as effective as delivery

of a manually executed counterpart hereof. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include electronic signatures, which shall be of the same legal effect, validity or enforceability as a manually executed signature, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

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

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

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

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

22. **WAIVER OF JURY TRIAL**. THE PARTIES HERETO, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT AND ANY TRANSACTION CONTEMPLATED HEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE. EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PERSON (AS DEFINED IN THE SENIOR CREDIT AGREEMENTS) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

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

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

SENIOR AGENT:

HT INVESTMENTS MA LLC, as Senior Agent

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

[*Signature Page to Subordination and Intercreditor Agreement*]

SUBORDINATED CREDITOR:

MJ ACQUISITION CORP., as Subordinated Creditor

By: /s/ Scott Ogur
Name: Scott Ogur
Title: Authorized Representative

[*Signature Page to Subordination and Intercreditor Agreement*]

CREDIT PARTIES:

AKERNA CORP., as a Credit Party

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

AKERNA SERVICES, LLC, as a Credit Party

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

MJ FREEWAY, LLC, as a Credit Party

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

WAIVER

This Waiver (this "**Waiver**") is entered into as of April 28, 2023, by and between Akerna Corp., a Delaware corporation (the "**Company**"), and the undersigned holder (the "**Holder**"), which constitutes the "**Required Holders**" pursuant to that certain Securities Purchase Agreement between the Company and all of the investors listed on the Schedule of Buyers (the "**Buyers**") dated October 5, 2021 (the "**SPA**") with reference to the following facts:

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

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

C. The Company desires to enter into a subordinated, secured promissory note dated the date hereof, in the form attached hereto as **Exhibit A** (the "**Secured Promissory Note**"), with MJ Acquistion Corp. ("**MJA**") in relation to a $1,000,000 loan from MJA regarding MJA's security purchase agreement dated the date hereof with the Company to acquire certain subsidiaries of the Company.

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

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

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

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

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

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

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

3. [RESERVED]

4. Effective Time. This Waiver shall be effective on April 28, 2023 (the "**Effective Time**").

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

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

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

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

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

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

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

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

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

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

15. Governing Law; Jurisdiction; Jury Trial. All questions concerning the construction, validity, enforcement and interpretation of this Waiver shall be governed by the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Waiver and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WAIVER OR ANY TRANSACTION CONTEMPLATED HEREBY.**

[Signature Pages Follow]

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

COMPANY:

AKERNA CORP.

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

[Signature Page to Waiver – April 2023]

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

HOLDER:

HIGH TRAIL INVESTMENTS SA LLC

By: /s/ Eric Helenek
Name: Eric Helenek
Title: Authorized Signatory

[HT Signature Page to Waiver – April 2023]

HOLDER:

ALTO OPPORTUNITY MASTER FUND, SPC - SEGREGATED MASTER PORTFOLIO B

By: /s/ Waqas Khatri
Name: Waqas Khatri
Title:

[Alto Signature Page to Waiver – April 2023]

Exhibit 99.1

Akerna Announces Sale of Software Business to MJ Freeway Acquisition Co, Coinciding with Merger with Gryphon Digital Mining

Akerna to sell its cannabis software business, including MJ Platform and Leaf Data Systems, to MJ Freeway Acquisition Co in a $5 million cash transaction; Alleaves participating in the financing of the acquisition; closing to coincide with previously announced Gryphon Digital Mining merger

DENVER, April 28, 2023 /Globe Newswire/ -- Akerna Corp. ("Akerna") (Nasdaq: KERN) today announced that simultaneous to its merger with Gryphon Digital Mining, Inc. ("Gryphon"), Akerna will sell its software business to MJ Freeway Acquisition Co ("MJ Acquisition Co"). Alleaves, Inc., ("Alleaves"), a provider of ERP software solutions to the cannabis industry, will be participating in the financing of the acquisition by MJ Acquisition Co.

MJ Acquisition Co will be acquiring MJ Freeway, including MJ Platform and Leaf Data System brands, and Ample Organics.

"This transaction marks yet another significant milestone for our company and underscores Alleaves' explosive and continued expansion in the cannabis industry," said Mike Beedles, CEO and Founder of Alleaves. "By bringing together our expertise in software and data analytics, we are well-positioned to continue to provide a seamless integrated solution that empowers our clients and states to reach new heights of success. This transaction also allows us to focus on high growth markets and continue to drive new innovation and collaboration as we continue to expand the Alleaves platform and revolutionize the cannabis industry."

As previously announced, 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.

Bryant Park Capital is acting as financial advisor to Alleaves.

About the Proposed Transactions:

In connection with the two transactions, Akerna entered into two separate definitive agreements.

As previously announced, on January 27, 2023, Akerna entered into 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.

The other definitive agreement is a Securities Purchase Agreement for the sale of Akerna's MJ Freeway and Ample Organics business units to MJAcquisiton Co for *$*5 million cash with $1 million of the purchase price being made available to Akerna upon signing of the Securities Purchase Agreement in the form of a one-year loan that will be forgiven at closing of the proposed sale transaction. 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 accounts payable 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.

As previously announced, 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.

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 an emerging technology firm focused on innovative technology. To be included on the Company's email distribution list, please sign up at https://ir.akerna.com/news-events/email-alerts.

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 Alleaves

Alleaves was founded with a knowledge of cannabis cultivation, manufacturing, and sale embedded in the company's culture. Their ultimate goal is to optimize the unique complexity of the cannabis journey affecting its operator customers, with a top-of-the-line ERP platform, focusing on the flexibility for customers to choose elements of its cohesive system designed to improve cannabis operator business operations. For more information, please visit Alleaves' website at www.alleaves.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 andMJ Acquisiton Co. 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, MJ Acquisiton Co. 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 Gryphon and Akerna. Actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation: (i) the risk that the conditions to the closing of the proposed transactions are not satisfied, including the failure to timely obtain stockholder approval for the transactions, if at all; (ii) uncertainties as to the timing of the consummation of the proposed transactions and the ability of each of Akerna, Gryphon and MJ Acquisition Co. to consummate the proposed merger or asset sale, as applicable; (iii) risks related to Akerna's ability to manage its operating expenses and its expenses associated with the proposed transactions pending closing; (iv) risks related to the failure or delay in obtaining required approvals from any governmental or quasi-governmental entity necessary to consummate the proposed transactions; (v) the risk that as a result of adjustments to the exchange ratio, Akerna stockholders and Gryphon stockholders could own more or less of the combined company than is currently anticipated; (vi) risks related to the market price of Akerna's common stock relative to the exchange ratio; (vii) unexpected costs, charges or expenses resulting from either or both of the proposed transactions; (viii) potential adverse reactions or changes to business relationships resulting from the announcement or completion of the proposed transactions; (ix) risks related to the inability of the combined company to obtain sufficient additional capital to continue to advance its business plan; 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, 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 and Gryphon expressly disclaim any obligation or undertaking to update or revise any forward-looking statements contained herein to reflect any change in its expectations with regard thereto or any change in events, conditions or circumstances on which any such statements are based.

Contacts:

Akerna
Meghan Shine, VP of Strategic Communications & Marketing
pr@akerna.com

Gryphon Digital Mining
Rob Chang
(877) MINE-ESG (877) 646-3374
invest@gryphonmining.com

Alleaves
Michael Alfonso
michael.a@alleaves.com

Investor Relations
ir@akerna.com