

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): May 4, 2023

Super League Gaming, Inc.

(Exact name of registrant as specified in its charter)

Delaware
*(State or other jurisdiction of
incorporation)*

001-38819
(Commission File Number)

47-1990734
*(IRS Employer
Identification Number)*

2912 Colorado Avenue, Suite #203
Santa Monica, California 90404
(Address of principal executive offices)

(213) 421-1920
(Registrant's telephone number, including area code)

Not Applicable
(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:

- 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))

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.

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 \$0.001 per share	SLGG	Nasdaq Capital Market

Item 1.01 Entry into a Material Definitive Agreement.

Entry into Subscription Agreements

On May 5, 2023, Super League Gaming, Inc. (the “Company”) entered into subscription agreements (each, a “Subscription Agreement” and collectively, the “Subscription Agreements”) with accredited investors with respect to the sale of an aggregate of 1,026 shares of newly designated Series AA-4 Convertible Preferred Stock, par value \$0.001 per share (the “Series AA Preferred”), at a purchase price of \$1,000 per share, for aggregate gross proceeds to the Company of approximately \$1,026,000 (the “Offering”).

In connection with the Offering, on May 5, 2023, the Company filed a Certificate of Designation of Preferences, Rights and Limitations of the Series AA-4 Preferred Stock (the “Series AA Certificate of Designation”), with the State of Delaware.

Each share of Series AA Preferred is convertible at the option of the holder, subject to certain beneficial ownership limitations and primary market limitations as set forth in each Series AA Certificate of Designation, into such number of shares of the Company’s common stock, par value \$0.001 (the “Common Stock”), equal to the number of Series AA Preferred to be converted, multiplied by the stated value of \$1,000 (the “Stated Value”), divided by the conversion price in effect at the time of the conversion (the initial conversion price will be \$0.4642 for the Series AA-4 Preferred, subject to adjustment in the event of stock splits, stock dividends, and similar transactions). In addition, subject to beneficial ownership and primary market limitations: (1) the Series AA Preferred will automatically convert into shares of Common Stock at the Conversion Price upon the earlier of (a) the 24-month anniversary of the respective filing date or (b) the consent to conversion by holders of at least 51% of the outstanding shares of Series AA Preferred; and (2) on the one year anniversary of the respective filing date, the Company may, in its discretion, convert (y) 50% of the outstanding shares of Series AA Preferred if the volume-weighted average price of the Company’s Common Stock over the previous 10 days as reported on the NASDAQ Capital Market (the “VWAP”), equals at least 250% of the Conversion Price, or (z) 100% of the outstanding shares of Series AA Preferred if the VWAP equals at least 300% of the Conversion Price.

The Series AA Preferred shall vote together with the Common Stock on an as-converted basis, and not as a separate class, subject to the primary market limitations, except that holders of Series AA Preferred shall vote as a separate class with respect to (a) amending, altering, or repealing any provision of the Series AA Certificate of Designation in a manner that adversely affects the powers, preferences or rights of the Series AA Preferred, (b) increasing the number of authorized shares of Series AA Preferred, (c) authorizing or issuing an additional class or series of capital stock that ranks senior to or pari passu with the Series AA Preferred with respect to the distribution of assets on liquidation, (d) authorizing, creating, incurring, assuming, guaranteeing or suffering to exist any indebtedness for borrowed money of any kind outside of accounts payable in the ordinary course of business, (e) entering into any agreement with respect to the foregoing; or (f) approving the issuance of Common Stock below the Conversion Price Floor (as defined in the Certificate of Designations). In addition, no holder of Series AA Preferred shall be entitled to vote on any matter presented to the Company’s stockholders relating to approving the conversion of such holder’s Series AA Preferred into an amount in excess of the primary market limitations. Upon any dissolution, liquidation or winding up, whether voluntary or involuntary, holders of Series AA Preferred (together with any Parity Securities (as defined in the Series AA Certificate of Designations) will be entitled to first receive distributions out of the Company’s assets in an amount per share equal to the Stated Value plus all accrued and unpaid dividends, whether capital or surplus before any distributions shall be made on any shares of Common Stock (after the payment to any senior security, if any).

Holders of the Series AA Preferred will be entitled to receive dividends, subject to the beneficial ownership and primary market limitations, payable in the form of that number of shares of Common Stock equal to 20% of the shares of Common Stock underlying the Series AA Preferred then held by such holder on the 12 and 24 month anniversaries of the respective filing date. In addition, subject to the beneficial ownership and primary market limitations, holders of Series AA Preferred will be entitled to receive dividends equal, on an as-if-converted to shares of Common Stock basis, and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. Notwithstanding the foregoing, to the extent that a holder’s right to participate in any dividend in shares of Common Stock to which such holder is entitled would result in such holder exceeding the beneficial ownership and primary market limitations, then such holder shall not be entitled to participate in any such dividend to such extent and the portion of such shares that would cause such holder to exceed the beneficial ownership and primary market limitations shall be held in abeyance for the benefit of such holder until such time, if ever, as such holder’s beneficial ownership thereof would not result in such holder exceeding the beneficial ownership and primary market limitations.

Subject to the effectiveness of the Corporate Actions set forth, and defined in, the Company's Definitive Information Statement on Schedule 14-C, filed with Securities and Exchange Commission on May 8, 2023 (the "*Stockholder Approval*"), pursuant to the Subscription Agreements, purchasers that (a) previously held shares of the Company's Series A Preferred Stock, par value \$0.001 per share, or (b) purchased at least \$3.5 million in shares of Series AA Preferred (subject to the acceptance of such lesser amounts in the Company's sole discretion), shall have the right to purchase shares of a newly designated series of Preferred Stock of the Company containing comparable terms as the Series AA Preferred (the "*Additional Investment Right*") from the date of each respective closing through the date that is 18 months thereafter as follows: (i) such investor may purchase an additional dollar amount equal to its initial investment amount at \$1,000 per share (the "*Original Issue Price*"), with a conversion price equal to the Conversion Price in effect on the date of original purchase; and (ii) such investor may purchase an additional dollar amount equal to its initial investment amount at the Original Issue Price, with a conversion price equal to 125% of the Conversion Price in effect on the date of original purchase.

Further subject to the effectiveness of the Stockholder Approval: (i) for as long as Series AA Preferred remains outstanding and subject to certain carveouts as described in the Series AA Certificate of Designations, if the Company conducts an offering at a price per share less than the then current conversion price (the "*Future Offering Price*") consisting of Common Stock, convertible or derivative instruments, and undertaken in an arms-length third party transaction, then in such event the conversion price of the Series AA Preferred shall be adjusted to the greater of: (a) the Future Offering Price and (b) the Conversion Price Floor; and (ii) if as of the 24-month anniversary date of April 19, 2023, the VWAP (as defined in the Series AA Certificate of Designation) for the five trading days immediately prior to such 24-month anniversary date is below the then current Conversion Price, the holder will receive a corresponding adjustment to the then conversion price, such adjustment not to exceed the Conversion Price Floor.

The Company and the investors in the Offering also executed a registration rights agreement (the "*Registration Rights Agreement*"), pursuant to which the Company agreed to file a registration statement covering the resale of the shares of Common Stock issuable upon conversion of the Series AA Preferred within sixty days following the final closing of the Offering and to use its best efforts to cause such registration statement to become effective within 90 days of the filing date.

The Company sold the shares of Series AA Preferred pursuant to a Placement Agency Agreement (the "*Placement Agency Agreement*") with a registered broker-dealer, which acted as the Company's exclusive placement agent (the "*Placement Agent*") for the Offering. Pursuant to the terms of the Placement Agency Agreement, in connection with the May 5, 2023 closing of the Offering, the Company paid the Placement Agent an aggregate cash fee of \$102,600, non-accountable expense allowance of \$30,780 and will issue to the Placement Agent or its designees warrants (the "*Placement Agent Warrants*") to purchase 2,247,8948 shares of Common Stock at an exercise price of \$0.4642 per share. The Placement Agent shall also earn fees and be issued additional Placement Agent Warrants with respect to any securities issued pursuant to the Additional Investment Rights. The Company also granted the Placement Agent the right of first refusal, for a twelve (12) month period after the final closing of the Offering, to serve as the Company's lead or co-placement agent for any private placement of the Company's securities (equity or debt) that is proposed to be consummated with the assistance of a registered broker dealer.

The securities to be issued in the Offering are exempt from the registration requirements of the Securities Act of 1933, as amended (the "*Securities Act*"), pursuant to Section 4(a)(2) of the Securities Act and/or Rule 506(b) of Regulation D promulgated thereunder because, among other things, the transaction did not involve a public offering, the investors are accredited investors, the investors are purchasing the securities for investment and not for resale and the Company took appropriate measures to restrict the transfer of the securities. The securities have not been registered under the Securities Act and may not be sold in the United States absent registration or an exemption from registration. This Current Report on Form 8-K shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

The Subscription Agreements contain representations and warranties that the parties made to, and solely for the benefit of, the other signatories to the Subscription Agreements in the context of all of the terms and conditions thereof and in the context of the specific relationship between the parties to the Subscription Agreements. The provisions of such Subscription Agreements, including the representations and warranties contained therein, are not for the benefit of any party other than the party signatories thereto and are not intended for investors and the public to obtain factual information about the current state of affairs of the parties to such Subscription Agreements. Rather, investors and the public refer to other disclosures contained in the Company's filings with the U.S. Securities and Exchange Commission.

The forgoing description of the Series AA-4 Certificate of Designation is qualified in its entirety by reference to the full text of the document, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K. The foregoing description of the Form of Subscription Agreement, Form of Registration Rights Agreement, and Form of Placement Agent Warrants are qualified in their entirety by reference to the full text of such documents, copies of which are filed as Exhibit 10.1, Exhibit 10.2, and Exhibit 10.3, respectively, to the Company's Current Report on Form 8-K, filed with the SEC on April 25, 2023. The foregoing description of the Placement Agency Agreement is qualified by reference to the full text of this documents, a copy of which will be filed in the Company's next periodic report due to be filed under the Exchange Act.

Entry into Asset Purchase Agreement

On May 4, 2023, Super League Gaming, Inc. (the “Company”), entered into an Asset Purchase Agreement (the “Purchase Agreement”) with Melon, Inc., a Delaware corporation (“Melon”), pursuant to which the Company acquired substantially all of the assets of Melon (the “Melon Assets”) (the “Acquisition”). The consummation of the Acquisition (the “Closing”) occurred simultaneously with the execution of the Purchase Agreement.

At the Closing, the Company paid an aggregate total of \$900,000 to Melon (the “Closing Consideration”), of which \$150,000 was paid in the form of the forgiveness of certain working capital advances paid to Melon between the dates of April 14, 2023 to May 4, 2023 in the equivalent amount, and the remaining \$750,000 was paid in the form of shares of the Company’s Common Stock, valued at \$0.4818 (the “Closing Share Price”), the volume average weighted price (“VWAP”), as quoted on the Nasdaq Capital Market, for the five (5) trading days immediately preceding May 4, 2023.

Pursuant to the terms and subject to the conditions of the Purchase Agreement, up to an aggregate of \$2,350,000 (the “Contingent Consideration”) will be payable to Melon in connection with the achievement of certain revenue milestones for the period from the Closing until December 31, 2023 (the “First Earnout Period”) in the amount of \$1,000,000, and for the year ending December 31, 2024 (the “Second Earnout Period”) in the amount of 1,350,000 (the “Second Earnout Period” and the First Earnout Period are collectively referred to as the “Earnout Periods”). The Contingent Consideration is payable in the form of cash and Common Stock, with \$600,000 of the aggregate Contingent Consideration being payable in the form of cash, and \$1,750,000 payable in the form of Common Stock, valued at the greater of (a) the Closing Share Price, and (b) the VWAP for the five trading days immediately preceding the end of each respective Earnout Period.

Additionally, pursuant to the Purchase Agreement, the Company entered into employment agreements with Mr. Joshua Neuman and Mr. Devon Thome, pursuant to which Mr. Neuman and Mr. Thome were granted inducement awards consisting of restricted stock unit awards (“RSUs”) to acquire an aggregate of 2,075,550 shares of its common stock. The awards were granted pursuant to terms and conditions fixed by the Compensation Committee of the Company’s Board of Directors and as an inducement material to each new employee entering employment with Super League in accordance with Nasdaq Listing Rule 5635(c)(4). Of the 2,075,550 RSUs: (A) 830,220 of the RSUs will vest in 25 equal monthly installments beginning on May 4, 2023, and on the first of each calendar month, subject to the applicable employee’s continued service with Super League on each such vesting date; and (B) 1,245,330 of the RSUs will vest as follows: (i) 25% will vest upon the achievement of certain net revenue targets for the fiscal year ending December 31, 2024, to be determined by the Board of Directors in their discretion; (ii) 25% upon the achievement of certain net revenue targets for the fiscal year ending December 31, 2025, to be determined by the Board of Directors in its sole discretion; (iii) 25% upon Super League’s Common Stock maintaining a minimum closing price of at least \$1.50 over a rolling 30 consecutive trading day period, as quoted on the Nasdaq Capital Market; and (iv) 25% upon Super League’s Common Stock maintaining a minimum closing price of at least \$2.50 over a rolling 30 consecutive trading day period, as quoted on the Nasdaq Capital Market. The vesting of the RSUs will accelerate upon a change of control of the Company. In addition, upon (Y) the Company’s termination of the employment of the respective employee without cause, or (Z) the respective employees resignation for good reason, the RSUs will continue to vest as if (Y) or (Z) had not occurred. The RSUs are subject to the terms and conditions of the RSU agreement covering each grant.

The Acquisition was approved by the board of directors of each of the Company and Melon, and was approved by the sole stockholder of Melon.

The Purchase Agreement contains representations, warranties and covenants of the Company and Melon that are customary for a transaction of this nature, including among others, covenants by Melon regarding the validity of certain material contracts entered into between Melon and third-parties being assigned to the Company, title to the Melon Assets, the condition and sufficiency of the Melon Assets, Melon’s ownership and rights to its intellectual property, tax liabilities, and the investment representations of Melon.

The Purchase Agreement also contains customary indemnification provisions whereby Melon will indemnify the Company for certain losses arising out of inaccuracies in, or breaches of, the representations, warranties and covenants of Melon, pre-closing taxes of Melon, and certain other matters, subject to certain caps and thresholds.

The foregoing description of the Purchase Agreement does not purport to be complete and is qualified in its entirety by the full text of the Purchase Agreement, a copy of which is filed as Exhibit 2.1 hereto and is incorporated by reference herein. The Purchase Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company or Melon. In particular, the assertions embodied in the representations and warranties contained in the Purchase Agreement are qualified by information in the confidential disclosure schedules (the “Disclosure Schedules”) provided by Melon and the Company in connection with the Closing under the Purchase Agreement. These Disclosure Schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties and certain covenants set forth in the Purchase Agreement. Moreover, certain representations and warranties in the Purchase Agreement were used for the purposes of allocating risk between the Company and Melon, rather than establishing matters of fact. Accordingly, the representations and warranties in the Purchase Agreement should not be relied on as characterization of the actual state of facts regarding the Company or Melon.

The Closing of the Acquisition and the incorporation of the Melon Assets involves certain risks and uncertainties, including, among other things, risks related to our ability to successfully integrate Melon’s operations; our ability to implement plans, forecasts and other expectations with respect to Melon’s business; our ability to realize the anticipated benefits of the Acquisition, including the possibility that the expected benefits from the Acquisition will not be realized or will not be realized within the expected time period; the achievement of the revenue milestones and payment of the Contingent Consideration; the outcome of any legal or governmental proceedings related to the Acquisition or otherwise; the negative effects of the announcement of the Acquisition on the market price of our Common Stock or on our operating results; significant transaction costs; unknown liabilities; attracting new customers and maintaining and expanding our existing customer base; our ability to scale and update our platform to respond to customers’ needs and rapid technological change; increased competition on our market and our ability to compete effectively; and expansion of our operations and increased adoption of our platform internationally.

Additional risks and uncertainties that could affect our financial results are included in the section titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the period ended December 31, 2022, as filed with the Securities and Exchange Commission (the "SEC") on March 31, 2023, our subsequently filed quarterly reports on Form 10-Q and other filings that we make from time to time with the SEC on which are available on the SEC's website at www.sec.gov.

Item 2.01 Completion of Acquisition or Disposition of Assets.

As more specifically set forth in Item 1.01 herein under "Entry into Asset Purchase Agreement," which is incorporated herein by reference, the Company completed its acquisition of Melon Assets on May 4, 2023.

Item 3.02 Unregistered Sales of Equity Securities.

Sale of Series AA Preferred Stock

The response to this item is included in Item 1.01, Entry into a Material Definitive Agreement, under "Entry into Subscription Agreements," and is incorporated herein in its entirety.

Sale of Common Stock Pursuant to Purchase Agreement

Please see Item 1.01, Entry into a Material Definitive Agreement, under "Entry into Asset Purchase Agreement," with respect to the shares of Common Stock issued to Melon at Closing as part of the Closing Consideration, which Closing Consideration was issued in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The Certificate of Incorporation of the Company authorizes the issuance of up to 10,000,000 shares of preferred stock and further authorizes the Board of the Company to fix and determine the designation, preferences, conversion rights, or other rights, including voting rights, qualifications, limitations, or restrictions of the preferred stock.

On May 5, 2023, the Company filed the Series AA-4 Certificate of Designation, designating 1,026 shares of Series AA-4 Preferred in connection with the Offering.

Item 8.01 Other Events.

On May 9, 2023, the Company issued a press release announcing the entry into the Purchase Agreement and the Closing of the Acquisition. The press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits Index

Exhibit No.	Description
2.3*	Asset Purchase Agreement, by and between Super League Gaming, Inc., and Melon, Inc., dated May 4, 2023
3.1	Certificate of Designation of Preferences, Rights and Limitations of the Series AA-4 Preferred Stock
99.1	Press Release issued by Super League Gaming, Inc., dated May 9, 2023
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Certain portions of this exhibit (indicated by "[****]") have been omitted as the Company has determined (i) the omitted information is not material and (ii) the omitted information would likely cause harm to the Company if publicly disclosed.

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 thereunto duly authorized.

Date: May 9, 2023

Super League Gaming, Inc.

By: /s/ Clayton Haynes
Clayton Haynes
Chief Financial Officer

ASSET PURCHASE AGREEMENT

Between

MELON, INC.

And

SUPER LEAGUE GAMING, INC.

dated as of
May 4, 2023

ASSET PURCHASE AGREEMENT

This **Asset Purchase Agreement** (this “**Agreement**”), dated as of May 4, 2023 is entered into between Melon, Inc., a Delaware corporation (“**Seller**”) and Super League Gaming, Inc., a Delaware corporation (“**Buyer**”).

RECITALS

WHEREAS, Seller is engaged in the business of developing, licensing and promoting digital assets on the Metaverse and Roblox platforms (the “**Business**”);

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein; and

WHEREAS, a portion of the purchase price payable by Buyer to Seller shall be placed in escrow by Buyer, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement;

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:

“**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.

“**Ancillary Documents**” means the Bill of Sale, the Assignment and Assumption Agreement, Intellectual Property Assignments, the Employment Agreements, the Inducement Award Agreements, the Independent Contractor Agreements, the Release Agreements, and the other agreements, instruments and documents required to be delivered at the Closing.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Los Angeles are authorized or required by Law to be closed for business.

“**Buyer Common Stock**” means the common stock of Buyer, par value \$0.001.

“**Buyer's Accountants**” means Baker Tilly US, LLP.

“**Buyer Material Adverse Effect**” means, with respect to Buyer, any event, occurrence, fact, condition, or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (a) the business, results of operations, condition, or assets of Parent and its Subsidiaries, taken as a whole; or (b) the ability of Buyer to consummate the transactions contemplated hereby on a timely basis.

“**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 Cash Consideration**” means One Hundred Fifty Thousand and 00/100 Dollars (\$150,000), subject to adjustment as more specifically set forth hereinbelow.

“**Closing Share Consideration**” means the number of shares of Buyer's Common Stock equal to (i) Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), divided by (ii) the Closing Share Price, rounded up to the nearest whole number of shares.

“**Closing Share Price**” means VWAP of the five (5) Trading Days immediately preceding the Closing Date.

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

“**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.

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

“**Dollars or \$**” means the lawful currency of the United States.

“**Earnout Consideration**” means the Initial Earnout Consideration and/or Year-Two Earnout Consideration, as applicable.

“**Earnout Payment**” means the sum of (x) the cash amount of any Earnout Consideration actually paid to the Seller, plus (y) the Earnout Share Consideration actually issued to Seller.

“**Earnout Period**” means each of the First Earnout Period and/or the Second Earnout Period, as applicable.

“**Earnout Share Consideration**” means the number of shares of Buyer Common Stock issued to Seller as Earnout Consideration.

“**Earnout Shares**” means any shares of Buyer Common Stock issued to Seller in satisfaction of any applicable Earnout Share Consideration.

“**Employment Agreements**” means those certain employment agreements between those individuals listed on Schedule 1(e), individually, and the Buyer, in the form attached hereto as Exhibit A.

“**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 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, 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 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.; 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 the Seller or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“**First Earnout Period**” means the period beginning on the Closing Date and ending on December 31, 2023.

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

“**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.

“**Gross Profit**” means, during any Earnout Period, the amount, in dollars, of all Revenue recognized by the Buyer, less all discounts and customer allowances, minus the cost of goods and/or services sold, determined on a consistent basis in accordance with U.S. GAAP and the past practices of Buyer.

“**Gross Profit Amount**” means for each Earnout Period, the aggregate amount of Gross Profit during such Earnout Period.

“**Gross Profit Margin**” means, for any Earnout Period, the fraction having a numerator equal to the Gross Profit Amount as of the end of the applicable fiscal year and having a denominator equal to the Revenue as of the end of such fiscal year.

“**Gross Profit Margin Threshold**” means a Gross Profit Margin of at least thirty-five percent (35%).

“**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.

“**Independent Contractor Agreements**” means those Independent Contractor Agreements between Buyer and each of the contractors of Seller listed on Schedule 1(i), in the form attached hereto as Exhibit B.

“**Initial Earnout Consideration**” means an amount not to exceed One Million and 00/100 Dollars (\$1,000,000.00), subject to adjustment as more specifically set forth hereinbelow, payable as follows: (i) Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) payable in the form of cash, and (ii) (A) the number of shares of Buyer Common Stock equal to Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00), divided by (B) the Initial Earnout Share Price, rounded up to the nearest whole number of shares.

“**Initial Earnout Share Price**” means the greater of (i) the Closing Share Price, or (ii) the VWAP for the five (5) Trading Days immediately preceding December 31, 2023.

“**Initial Revenue Target**” means Revenue attributable to the First Earnout Period of Two Million Five Hundred and 00/100 Dollars (\$2,500,000.00), determined on a consistent basis in accordance with U.S. GAAP and the past practices of Buyer.

“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 Entity-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) 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”**); (g) 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 (**“Software”**); and (h) rights of publicity; and (i) all other intellectual or industrial property and proprietary rights.

“Intellectual Property 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 any Intellectual Property that is used or held for use in the conduct of the Business as currently conducted or proposed to be conducted by Buyer as of the Closing Date to which Seller is a party, beneficiary or otherwise bound.

“Intellectual Property Assets” means all Intellectual Property that is owned by Seller and used or held for use in the conduct of the Business as currently conducted or proposed to be conducted by Buyer as of the Closing Date, together with all (i) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Seller with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, or application by 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.

“Knowledge of Seller or Seller's Knowledge” or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of Seller, 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**” means 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.

“**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 consequential, incidental, special, exemplary or punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

“**Seller Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business and/or Seller, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis;

“**Nasdaq**” means the NASDAQ Capital Market.

“**Operating Capital Advances**” means those certain funds loaned by Buyer to Seller prior to the Closing Date, to be used by Seller for its working capital needs.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities other than Intellectual Property Registrations.

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

“**Post-Closing Adjustment Amount**” means the aggregate dollar value of: (i) all Assigned Contracts not yet properly assigned to Seller as of the Closing Date, for which the contracting party did not provide (or refused to provide) the requisite consent to the assignment of such Assigned Contract before the sixtieth (60th) day after the Closing Date; *plus* (ii) all Assigned Contracts which the contracting party provided a prepayment for services to be provided by Seller, and for which such contracting party terminated the services thereunder for which Buyer was required to repay (or otherwise fund the repayment thereof); *plus* (iii) all advance payments made to Seller under Assigned Contracts to the extent the corresponding work relating thereto has not been performed; *provided, further*, a percentage of completion method will be utilized to calculate any variance in advance payments vis-à-vis work performed by Seller prior to the Closing in connection therewith.

“**Post-Closing Tax Period**” means any taxable period beginning on and after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending 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.

“**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).

“**Release Agreements**” means those certain Release Agreements between Seller and those employees and contractors listed on Schedule 1(r)(i), and in the form attached hereto as Exhibit C.

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

“**Restricted Business**” means the business of the Company as carried on at Closing.

“**Revenue**” means, with respect to a specific period, the amount of gross revenue that the Buyer receives or recognizes from sales through the Business during such period, as determined in accordance with US GAAP and the past practices of Buyer, and is (a) strictly from the partners listed in Schedule 1(r)(ii) hereto, (b) from pre-Closing Seller partnerships and clients which are properly assigned to Buyer, (c) generated by those employees of Seller hired by Buyer as of the Closing, with third parties who Buyer is not actively pursuing at the time the lead emerges, (d) from Tool Blocks, Seller’s developer marketplace, or (e) derived from portions of bookings directly associated with or using Seller’s technology that enables digital-to-physical transactional activity through Roblox to which it can be applied.

“**Revenue Percentage**” means an amount, expressed as a percentage, equal to (i) the Revenue during the applicable Earnout Period *divided by* (ii) the Revenue Target.

“**Revenue Target**” means the Initial Revenue Target and/or Year-Two Revenue Target, as applicable.

“**Second Earnout Period**” means the period beginning on January 1, 2024, and ending on December 31, 2024.

“**Second Earnout Share Price**” means the greater of (i) the Closing Share Price, or (ii) the VWAP for the five (5) Trading Days immediately preceding December 31, 2024.

“**Seller's Accountants**” means AirCFO.

“**Seller Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business and/or Seller, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis;

“**Taxes**” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“**Territory**” means worldwide.

“**Trading Day**” means a day on which the principal Trading Market is open for business.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**VWAP**” means the volume-weighted average price of Buyer's Common Stock as reported on Nasdaq.

“**Year-Two Earnout Consideration**” means up to One Million Three Hundred Fifty Thousand and 00/100 Dollars (\$1,350,000.00), subject to adjustment as more specifically set forth hereinbelow, payable as follows: (i) Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) payable in the form of cash, and (ii) the number of shares of Buyer Common Stock equal to (a) One Million and 00/100 Dollars (\$1,000,000.00), divided by (b) the Second Earnout Share Price, rounded up to the nearest whole number of shares.

“**Year-Two Revenue Target**” means Revenue attributable to the Second Earnout Period of Five Million and 00/100 Dollars (\$5,000,000.00), determined on a consistent basis in accordance with U.S. GAAP and the past practices of Buyer.

Other capitalized terms used herein and not defined above shall have the meanings assigned to such terms as follows:

<u>Defined Term</u>	<u>Section</u>
“ Accounts Receivable ”	Section 2.01(b)
“ Acquisition Proposal ”	Section 6.03(b)
“ Advance Excess ”	Section 2.06(a)(ii)
“ Agreement ”	Preamble
“ Allocation Schedule ”	Section 2.08
“ Assigned Contracts ”	Section 2.01(d)
“ Assignment and Assumption Agreement ”	Section 3.02(a)(ii)
“ Assumed Liabilities ”	Section 2.03
“ Audited Financial Statements ”	Section 4.04
“ Balance Sheet ”	Section 4.04
“ Balance Sheet Date ”	Section 4.04
“ Basket ”	Section 8.04(a)
“ Benefit Plan ”	Section 4.19(a)
“ Bill of Sale ”	Section 3.02(a)(i)
“ Books and Records ”	Section 2.01(m)
“ Business ”	Recitals
“ Buyer ”	Preamble
“ Buyer Closing Certificate ”	Section 7.03(g)
“ Buyer Indemnitees ”	Section 8.02
“ Cap ”	Section 8.04(a)
“ Closing ”	Section 3.01
“ Closing Date ”	Section 3.01
“ Closing Date Adjustments ”	Section 2.06(a)(i)
“ Company IP ”	Section 4.11(d)
“ Direct Claim ”	Section 8.05(c)
“ Disputed Amount ”	Section 2.06(c)(iii)
“ Earnout Calculations ”	Section 2.07(a)
“ Earnout Expert ”	Section 2.07(c)
“ Earnout Notice ”	Section 2.07(a)
“ Earnout Objection Notice ”	Section 2.07(b)
“ Earnout Objection Period ”	Section 2.07(b)
“ Excluded Assets ”	Section 2.02
“ Excluded Contracts ”	Section 2.02(a)
“ Excluded Liabilities ”	Section 2.04
“ Financial Statements ”	Section 4.04
“ Government Contracts ”	Section 4.07(a)(viii)

“Indemnified Party”	Section 8.05
“Indemnifying Party”	Section 8.05
“Independent Accountant”	Section 2.08
“Instruction Letter”	Section 3.02(b)(ii)
“Insurance Policies”	Section 4.15
“Intellectual Property Assignments”	Section 3.02(a)(iii)
“Interim Balance Sheet”	Section 4.04
“Interim Balance Sheet Date”	Section 4.04
“Interim Financial Statements”	Section 4.04
“Inventory”	Section 2.01(c)
“Material Contracts”	Section 4.07(a)
“Material Customers”	Section 4.14(a)
“Material Suppliers”	Section 4.14(b)
“Non-U.S. Benefit Plan”	Section 4.19(a)
“Platform Agreements”	Section 4.11(c)
“Post-Closing Adjustment”	Section 2.06(b)(ii)
“Post-Closing Adjustment Statement”	Section 2.06(b)(i)
“Purchase Price”	Section 2.05
“Purchased Assets”	Section 2.01
“Resolution Period”	Section 2.06(c)(ii)
“Restricted Period”	Section 6.07(a)
“Revenue Earnout”	Section 2.07
“Review Period”	Section 2.06(c)(i)
“Rule 144”	Section 4.23(f)
“Securities Act”	Section 4.23(a)
“Seller”	Preamble
“Seller Closing Certificate”	Section 7.02(j)
“Seller Indemnitees”	Section 8.03
“Statement of Objections”	Section 2.06(a)(ii)
“Tangible Personal Property”	Section 2.01(f)
“Tax Clearance Certificate”	Section 6.16
“Termination Repayment”	Section 9.02(b)
“Third Party Claim”	Section 8.05(a)
“Undisputed Amounts”	Section 2.06(c)(iii)
“Union”	Section 4.20(b)
“Year-End Financial Statements”	Section 4.04

**ARTICLE II
PURCHASE AND SALE**

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the "**Purchased Assets**"), including, without limitation, the following:

- (a) cash and cash equivalents;
 - (b) all accounts and/or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing ("**Accounts Receivable**");
 - (c) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories ("**Inventory**");
 - (d) all Contracts, including Intellectual Property Agreements, set forth on Section 2.01(d) of the Disclosure Schedules (the "**Assigned Contracts**");
 - (e) all Intellectual Property Assets;
 - (f) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property (the "**Tangible Personal Property**");
 - (g) all Real Property;
 - (h) all Permits, including Environmental Permits, which are held by Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including, without limitation, those listed on Section 4.17(b) of the Disclosure Schedules, in each case to the extent a transfer is permitted by applicable Law;
 - (i) all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;
 - (j) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes);
 - (k) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;
 - (l) all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities;
-

(m) originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements (“**Books and Records**”); and

(n) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the “**Excluded Assets**”):

(a) Contracts, including Intellectual Property Agreements, that are not Assigned Contracts (the “**Excluded Contracts**”);

(b) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller;

(c) all Benefit Plans and assets attributable thereto;

(d) the assets, properties and rights specifically set forth on Section 2.02(d) of the Disclosure Schedules; and

(e) the rights which accrue or will accrue to Seller under this Agreement and the Ancillary Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the Liabilities of Seller in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed on and after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller prior to the Closing (collectively, the “**Assumed Liabilities**”), and no other Liabilities whatsoever.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “**Excluded Liabilities**”). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller (or any stockholder or Affiliate of Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.15; or (iii) other Taxes of Seller (or any stockholder or Affiliate of Seller) of any kind or description (including any Liability for Taxes of Seller (or any stockholder or Affiliate of Seller) that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation prior to the Closing Date;

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(f) any recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller;

(g) any Liabilities of Seller arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Seller;

(h) any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments;

(i) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing prior to the Closing or otherwise to the extent arising out of any actions or omissions of Seller;

(j) any trade accounts due and payable by Seller;

(k) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Seller before the Closing; (ii) did not arise in the ordinary course of business; or (iii) are not validly and effectively assigned to Buyer pursuant to this Agreement;

(l) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same), except for indemnification of same pursuant to Section 8.03 as Seller Indemnitees;

(m) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Agreements, (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to Closing;

(n) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Business owing to financial institutions; and

(o) any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be the Closing Cash Consideration and the Closing Share Consideration, plus the amount set forth in Section 2.07 (the "**Purchase Price**"), plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as provided in Section 3.02.

Section 2.06 Purchase Price Adjustments.

(a) Closing Date Adjustments.

(i) At the Closing, the Closing Cash Payment shall be adjusted downward, on a dollar-for-dollar basis, by an amount equal to the aggregate total of all Operating Capital Advances made by Buyer to Seller (the "**Closing Date Adjustments**").

(ii) In the event the aggregate amount of the Operating Capital Advances exceeds the Closing Cash Payment, such additional amounts (the “**Advance Excess**”) shall be deducted: (A) from the cash portion of the Initial Earnout Consideration, and (B) to the extent the Advance Excess exceeds the cash portion of the Initial Earnout Consideration, from the cash portion of the Year-Two Earnout Consideration.

(b) Post-Closing Adjustment.

(i) Within seventy-five (75) days after the Closing Date, Buyer shall prepare and deliver to Seller (A) a statement setting forth its calculation of the Post-Closing Adjustment Amount (the “**Post-Closing Adjustment Statement**”), and (B) a certificate of the Chief Financial Officer of Buyer that the Post-Closing Adjustment 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 Audited Financial Statements for the most recent fiscal year end, subject to reasonable modifications and limitations.

(ii) The “**Post-Closing Adjustment**” shall be an amount equal to the Post-Closing Adjustment Amount, and such amount shall be deducted (a) from the cash portion of the Initial Earnout Consideration, and (b) to the extent such Post Closing Adjustment exceeds the cash portion of the Initial Earnout Consideration, the stock consideration of the Initial Earnout Consideration.

(c) Examination and Review.

(i) Examination. After receipt of the Post-Closing Adjustment Statement, Seller shall have ten (10) days (the “**Review Period**”) to review the Post-Closing Adjustment Statement. During the Review Period, Seller and Seller's Accountants shall have full access to the relevant books and records of Buyer, the personnel of, and work papers prepared by, Buyer and/or Buyer's Accountants to the extent that they relate to the Post-Closing Adjustment Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Post-Closing Adjustment Statement as Seller may reasonably request for the purpose of reviewing the Post-Closing Adjustment 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. Buyer will provide materials requested by Seller no later than three (3) Business Days of Seller's request.

(ii) Objection. On or prior to the last day of the Review Period, Seller may object to the Post-Closing Adjustment 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 Post-Closing Adjustment Statement and the Post-Closing Adjustment, as the case may be, reflected in the Post-Closing Adjustment 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 five (5) 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 Post-Closing Adjustment 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 an impartial nationally recognized firm of independent certified public accountants other than Seller's Accountants or Buyer's Accountants ("**Independent Accountants**"), appointed by the mutual agreement of Buyer and Seller, 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 Post-Closing Adjustment Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountants 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 Post-Closing Adjustment Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountants. The fees and expenses of the Independent Accountants shall be paid by Seller, on the one hand, and 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 Accountants. The Independent Accountants 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 Post-Closing Adjustment Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) Any adjustments made pursuant to (b) shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.07 Contingent Consideration. An earnout may be earned by Seller as, and to the extent provided for, in this Section 2.07, and, if earned, shall be paid by Buyer to Seller following the Earnout Period as provided for in this Section 2.07 (such earnout, the “**Revenue Earnout**”):

(a) Within forty-five (45) days after the expiry of the Earnout Period, Buyer will use reasonable efforts to provide Seller with a preliminary draft of the Earnout Notice (defined below) with the understanding that such preliminary notice is for Seller’s information and subject to change as Buyer finalizes its end-of-fiscal-year accounting. Not later than ninety (90) days after the expiry of each Earnout Period, Buyer will provide Seller with written notice (the “**Earnout Notice**”) setting forth: (i) Buyer’s computation of Revenue for the applicable Earnout Period; (ii) Buyer’s computation of the Gross Profit Margin for the applicable Earnout Period; and (iii) whether any applicable Earnout Consideration was earned during the applicable Earnout Period (collectively, the “**Earnout Calculations**”).

(b) Upon the receipt by Seller of an Earnout Notice, Seller shall have a period of twenty (20) days to review the Earnout Notice and may have the same verified by independent accountants and other Representatives selected by Seller. Seller and its Representatives shall be entitled to perform reasonable procedures (including review of the accounting records of the Buyer and supporting such calculations and other materials as they may reasonably request) and to take any other reasonable steps that Seller and its Representatives deem appropriate to confirm that the amount of the Earnout Calculations for the applicable Earnout Period set forth in the Earnout Notice has been prepared in accordance with the terms of this Agreement. For the avoidance of doubt, reasonable procedures and reasonable requests include full access to the relevant books and records of Buyer, the personnel of, and work papers prepared by, Buyer and/or Buyer’s Accountants to the extent that they relate to the Earnout Calculations and to such historical financial information (to the extent in Buyer’s possession) relating to the Earnout Calculations. Buyer will provide materials requested by Seller within three (3) Business Days of Seller’s request. If Seller shall have any objections to the calculation of the Earnout Calculations set forth in the Earnout Notice, Seller shall deliver to Buyer, within twenty (20) days from its receipt of the Earnout Notice (the “**Earnout Objection Period**”), a written statement (the “**Earnout Objection Notice**”) setting forth the component or components of the Earnout Notice that are in dispute, the basis of such dispute and, if known, the amount proposed as an adjustment. The failure of Seller to deliver an Earnout Objection Notice within the twenty (20) day period hereinabove provided shall constitute the acceptance by Seller of the calculations and determinations made by Buyer as set forth in the Earnout Notice, whereupon such amounts shall be final, binding and conclusive for all purposes hereunder. Notwithstanding any dispute or objection, undisputed amounts of the Earnout Consideration shall be paid in accordance with Section 2.07(i).

(c) If Seller delivers an Earnout Objection Notice, Seller and Buyer shall in good faith attempt to resolve any such dispute and, if the parties so resolve all such disputes, then the computation of the Earnout Calculations set forth in the Earnout Notice for the applicable Earnout Period as resolved by the parties, shall be conclusive and binding on the parties upon written acknowledgement of such resolution. If Seller and Buyer fail to resolve all of the items in dispute within fifteen (15) days after Seller's delivery of the Earnout Objection Notice to Buyer (or such longer period as they may mutually agree in writing), then either party may elect to submit any remaining disputed items to an independent third-party arbitrator mutually acceptable to Buyer and Seller who shall be qualified by experience and training to arbitrate commercial disputes (the "**Earnout Expert**") who shall be retained to review promptly the Earnout Calculations set forth in the Earnout Notice and the disputed items or amounts; *provided, however*, that if the Buyer and Seller are unable to mutually agree on an individual to act as the Earnout Expert within five (5) Business Days after Buyer or Seller elects to submit the dispute to arbitration, then each of Buyer and Seller shall each designate an independent third-party arbitrator and such designees shall promptly (and in any event within ten (10) days) select an individual to act as the Earnout Expert.

(d) If any disputed items are referred to the Earnout Expert, the parties shall cooperate in good faith with the determination process and the Earnout Expert's requests for information, including providing the Earnout Expert with information as promptly as practicable after its request therefor. Each party shall be entitled to receive copies of all materials provided by the other to the Earnout Expert in connection with the determination process. In making its determination on the disputed items, the Earnout Expert shall make such determinations (i) only in accordance with the standards set forth in this Agreement, (ii) only with respect to the disputed items submitted to the Earnout Expert and no other items, (iii) on a disputed item by disputed item basis (i.e., not in the aggregate), and (iv) where the result of the Earnout Expert's determination for such disputed item is neither greater than nor less than the amounts presented by the parties to the Earnout Expert with respect to the item in dispute. In connection with the Earnout Expert's review, the Earnout Expert shall have the right to engage an independent accounting firm. The determination of the Earnout Expert shall be final, conclusive and binding on the parties, absent manifest error. The parties shall instruct the Earnout Expert to provide its determination in writing to the parties within thirty (30) days of the date it is engaged on such project. Neither party shall have any *ex parte* conversations or meetings with the Earnout Expert without the prior written consent of the other party.

(e) The Earnout Calculations for the applicable Earnout Period, and the earning of the applicable Earnout Consideration therefrom, either as accepted or deemed to have been accepted by Seller or as adjusted and resolved in the manner herein provided, shall fix the Earnout Calculations for the applicable Earnout Period and the earning of the Earnout Consideration determined therefrom. Each party shall bear its own expenses and the fees and expenses of its own Representatives, including its independent accountants, in connection with the preparation, review, dispute (if any) and final determination of the Earnout Calculations for the applicable Earnout Period, and the earning of any Earnout Consideration calculated therefrom.

(f) If the Revenue for the First Earnout Period is: (A) equal to or greater than one hundred percent (100%) of the Initial Revenue Target, and the Gross Profit Margin is above the Gross Profit Margin Threshold, then Seller shall be entitled to receive one hundred percent (100%) of the Initial Earnout Consideration; or (B) less than the Initial Revenue Target, but the Gross Profit Margin is above the Gross Profit Margin Threshold, then the Initial Earnout Consideration shall be an amount equal to the Revenue Percentage of the Initial Earnout Consideration.

(g) If the Revenue for the Second Earnout Period is: (A) (i) equal to or greater than one hundred percent (100%) of the Year-Two Revenue Target, and the Gross Profit Margin above the Gross Profit Margin Threshold, then Seller shall be entitled to receive one hundred percent (100%) of the Year-Two Earnout Consideration; or (B) less than the Year-Two Revenue Target, but the Gross Profit Margin is above the Gross Profit Margin Threshold, then the Year-Two Earnout Consideration shall be an amount equal to the Revenue Percentage of Year-Two Earnout Consideration.

(h) For the avoidance of doubt, Seller will not be entitled to Earnout Consideration for an applicable Earnout Period if the Revenue during an Earnout Period does not exceed the Gross Profit Margin Threshold. Further, Revenue realized during the First Earnout Period shall not, under any circumstance, be applied toward the Earnout Consideration for the Second Earnout Period.

(i) Following the Earnout Period, within five (5) Business Days after the date that is the earlier of (i) the acceptance of the Earnout Notice and the date on which written agreement in respect of any amount of the Revenue Earnout is reached or a determination is made in accordance with Section 2.07(c) or with Section 2.07(d), Buyer shall pay to Seller all undisputed portions of the Earnout Consideration, if any, as follows: (a) the portion of the Earnout Consideration paid in cash shall be paid by wire transfer of immediately available funds to the accounts identified by Seller at least three (3) days prior to the expiration of the applicable Earn-Out Period; and (b) the portion of the Earnout Consideration to be paid in Earnout Shares will be issued to Seller by Buyer.

(j) Seller acknowledges and agrees that Buyer may make from time to time such business decisions as it deems appropriate, in its sole discretion and in good faith, in the conduct of the business of Buyer and its Subsidiaries, including actions that may have an impact on Buyer's Revenue and/or the Earn-Out Consideration. Seller will have no right(s) to claim any lost Earn-Out Consideration or other damages as a result of such decisions so long as the actions were not taken by Buyer in bad faith for the principal purpose of frustrating provisions of this Section 2.07.

Section 2.08 Allocation of Purchase Price. Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) 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 fifteen (15) 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 thirty (30) days following the Closing Date, such dispute shall be resolved by an Independent Accountant, appointed by mutual agreement between Buyer and Seller. The fees and expenses of such Independent Accountant 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 (b) herein shall be allocated in a manner consistent with the Allocation Schedule.

Section 2.09 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder. To the extent Buyer determines that amounts are ultimately required to be deducted or withheld under this Section 2.09, Buyer shall use commercially reasonable efforts to provide Seller with prompt notice of any such required withholding prior to the date of such withholding and to cooperate with Seller to reduce or eliminate such required withholding to the extent permitted by applicable Tax Law; *provided, however*, that Buyer shall be under no obligation or requirement to assume or otherwise pay any Tax obligation (or increase its own Tax obligations) on behalf of Seller, or to otherwise incur any Tax obligations.

Section 2.10 Third Party Consents. To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this Section 2.10 to the contrary, Buyer shall not be deemed to have waived its rights under Section 7.02(d) hereof unless and until Buyer provides written waivers thereof.

ARTICLE III CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at 12:00 P.M., Pacific time, as soon as practicable (and, in any event, within three (3) Business Days) after all of the conditions to Closing set forth in ARTICLE VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The Closing shall take place via the electronic exchange of documents and executed signature pages, unless another place or means is agreed to in writing by the parties hereto, and the actual date of the Closing is hereinafter referred to as the “**Closing Date**.”

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale in the form of Exhibit D hereto (the “**Bill of Sale**”) and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement in the form of Exhibit E hereto (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) an assignment in the form of Exhibit F hereto (the “**Intellectual Property Assignments**”) and duly executed by Seller, transferring all of Seller’s right, title and interest in and to the Intellectual Property Assets to Buyer;

(iv) the employment offer letters, for all employees of Seller assumed by Buyer post-closing, duly executed by the signatories thereto (other than Buyer);

(v) the Employment Agreements, duly executed by the signatories thereto (other than Buyer);

(vi) the Independent Contractor Agreements, duly executed by the signatories thereto (other than Buyer);

(vii) the Release Agreements that can be obtained prior to Closing in compliance with applicable waiver, rescission, or waiting periods for those employees and contractors listed on Schedule 1(r)(i) who are under the age of 40, duly executed by the signatories thereto;

(viii) the Seller Closing Certificate;

(ix) the certificates of the Secretary or Assistant Secretary of Seller required by Section 7.02(k) and Section 7.02(l); and

(x) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

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

(i) the remaining Closing Cash Consideration after applying the Closing Date Adjustments, by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer;

(ii) a copy of the letter of instruction to Buyer's transfer agent, submitted to Buyer's transfer agent on the Closing Date, irrevocably instructing the transfer agent to issue to Seller, in book-entry form, the Closing Share Consideration, less any adjustments set forth herein (the "**Instruction Letter**");

(iii) the Assignment and Assumption Agreement duly executed by Buyer;

(iv) with respect to each Employment Agreement, the Employment Agreements duly executed by Buyer;

(v) with respect to each Independent Contractor Agreement, the Independent Contractor Agreements duly executed by Buyer;

(vi) evidence reasonably satisfactory to Seller of the cancellation of all promissory notes and amounts due thereunder in connection with the Operating Capital Advances;

(vii) the Buyer Closing Certificate; and

(viii) the certificates of the Secretary or Assistant Secretary of Buyer required by Section 7.03(g) and Section 7.03(h).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. (a) Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware 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 the Business as currently conducted. (b) Section 4.01 of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except to the extent that Seller's non-obtainment of such license or qualification to do business and good standing therein does not and would not be reasonably likely to have a Seller Material Adverse Effect.

Section 4.02 Authority of Seller.

(a) 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. 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. 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.

(b) The Board of Directors of Seller, by resolutions duly adopted by a unanimous vote at a meeting of all directors of Seller duly called and held (or by action by written consent) and, not subsequently rescinded or modified in any way, has: (i) determined that this Agreement and the transactions contemplated hereby, upon the terms and subject to the conditions set forth herein, are fair to, and in the best interests of, Seller and the Seller's stockholders; (ii) approved and declared advisable this Agreement, including the execution, delivery, and performance thereof, and the consummation of the transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth herein; (iii) directed that this Agreement be submitted to a vote of Seller's stockholders for adoption at a special meeting thereof or by action by written consent; and (iv) resolved to recommend that Seller's stockholders vote in favor of adoption of this Agreement in accordance with the DGCL (collectively, the "**Seller Board Recommendation**").

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller 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 certificate of incorporation, by-laws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) except as set forth on Section 4.03(c) 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, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract), except, with respect to any Permit, in the case where its breach, default, acceleration, termination, modification, expiration or cancellation would not have or be reasonably likely to have a Seller Material Adverse Effect; or (d) result in the creation or imposition of any Encumbrance on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements. Complete copies of the financial statements consisting of the balance sheet of Seller as at December 31 in each of the years 2022 and 2021 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Year-End Financial Statements**"), and financial statements consisting of the balance sheet of the Business as at March 31, 2023 and the related statements of income and retained earnings, stockholders' equity and cash flow for the six-month period then ended (the "**Interim Financial Statements**" and together with the Year-End Financial Statements, the "**Financial Statements**") are included in the Disclosure Schedules. The Financial Statements have been prepared in accordance in all material respects with Seller's past practices applied on a basis consistent with prior periods and commercially reasonable under the circumstances, 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 Year-End Financial Statements). The Financial Statements are based on the books and records of Seller, and fairly present the financial condition of Seller as of the respective dates they were prepared and the results of the operations of Seller for the periods indicated. The balance sheet of Seller as of December 31, 2022 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Business as of March 31, 2023 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". Seller maintains a system of accounting established and administered in accordance with past practices consistently applied, and commercially reasonable under the circumstances.

Section 4.05 Undisclosed Liabilities. Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Except as set forth on Section 4.06 of the Disclosure Schedules, since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect;
 - (b) declaration or payment of any dividends or distributions on or in respect of any of Seller's capital stock or redemption, purchase or acquisition of Seller's capital stock;
 - (c) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;
 - (d) material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for uncollectible Accounts Receivable, 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;
 - (e) entry into any Contract that would constitute a Material Contract;
 - (f) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
 - (g) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except for the sale of Inventory in the ordinary course of business;
 - (h) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;
 - (i) transfer or assignment of or grant of any license or sublicense under or with respect to any Intellectual Property Assets or Intellectual Property Agreements;
 - (j) abandonment or lapse of or failure to maintain in full force and effect any Intellectual Property Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in the Intellectual Property Assets;
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(k) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(l) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(m) material capital expenditures which would constitute an Assumed Liability;

(n) imposition of any Encumbrance upon any of the Purchased Assets;

(o) (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 any current or former employees, officers, directors, independent contractors or consultants of the Business, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee of the Business or any termination of any employees for which the aggregate costs and expenses exceed \$10,000, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the Business;

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

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

(r) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or employees of the Business;

(s) 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;

(t) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of \$15,000, individually (in the case of a lease, per annum) or \$30,000 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;

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

Section 4.07 Material Contracts.

(a) Section 4.07(a) of the Disclosure Schedules lists each of the following executory Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts concerning the occupancy, management or operation of any real property (including without limitation, brokerage contracts) listed or otherwise disclosed in the Disclosure Schedules and all Intellectual Property Agreements, being "**Material Contracts**"):

- (i) all Contracts involving aggregate consideration in excess of \$10,000 and which, in each case, cannot be cancelled without penalty or without more than thirty (30) days' notice;

- (ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

- (iii) all Contracts that provide for the indemnification 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 stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

- (v) any broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts involving aggregate consideration in excess of \$25,000;

- (vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than thirty (30) days' notice;

- (vii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees);

- (viii) all Contracts with any Governmental Authority ("**Government Contracts**");

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

(x) all joint venture, partnership or similar Contracts;

(xi) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

(xii) all powers of attorney with respect to the Business or any Purchased Asset;

(xiii) all collective bargaining agreements or Contracts with any Union;

(xiv) all Assigned Contracts that cannot be assigned without the consent of any third party; and

(xv) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section 4.07.

(b) Each Material Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller 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), 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 delivered to Buyer. There are no disputes pending or, to Seller's Knowledge, threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets. Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances.

Section 4.09 Condition and Sufficiency of Assets. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Purchased Assets are structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. For purposes of this Section 4.09, "material cost" means a cost greater than \$15,000. The Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute substantially all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

Section 4.10 Real Property. Seller does not own or otherwise lease any real property.

Section 4.11 Intellectual Property.

(a) Section 4.11(a) of the Disclosure Schedules contains a correct, current and complete list, as of the date hereof, of:

- (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; 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 unregistered Trademarks included in the Intellectual Property Assets;
- (iii) all Software (other than "off-the-shelf" licensed software), proprietary or otherwise, included in the Intellectual Property Assets; and
- (iv) all other Intellectual Property Assets that is used or held for use by Seller.

All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Entities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Seller has provided Buyer with true and correct copies of file histories, documents, certificates, office actions, correspondence, and other materials related to all Intellectual Property Registrations.

(b) Section 4.11(b) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements, specifying for each the date, title, and parties thereto, and separately identifying the Intellectual Property Agreements: (i) under which Seller is a licensor or otherwise grants to any Person any right or interest relating to any Intellectual Property Assets; (ii) under which Seller is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to Seller's ownership or use of any Intellectual Property, in each case identifying the Intellectual Property covered by such Intellectual Property Agreement. Seller has made available to Buyer true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on Seller in accordance with its terms and is in full force and effect. Neither Seller 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 Intellectual Property Agreement.

(c) Section 4.11(c) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used by Seller in the Business and its operations. Seller has complied in all material respects 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 used by Seller in the Business and its operations (collectively, "**Platform Agreements**"). There are no Actions settled, pending, or, to Seller's Knowledge, threatened alleging (A) any breach or other violation of any Platform Agreement by Seller; or (B) defamation, any violation of publicity rights of any Person, or any other violation by Seller in connection with its use of social media in the conduct of its business or operations.

(d) Seller is the sole and exclusive legal and beneficial, and with respect to the Intellectual Property Registrations, record, owner of all right, title and interest in and to the Intellectual Property Assets, 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 Business, including Platform Agreements and Intellectual Property Agreements, as currently conducted and as proposed to be conducted by Buyer as of the Closing Date (collectively, the "**Company IP**"), in each case, free and clear of Encumbrances. The Company IP is all of the Intellectual Property necessary to operate the Business as presently conducted and proposed to be conducted by Buyer as of the Closing Date. Seller has entered into binding, valid and enforceable written Contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any material Intellectual Property during the course of employment or engagement with Seller whereby such employee or independent contractor (i) acknowledges Seller's exclusive ownership of all Intellectual Property invented, created or developed by such employee or independent contractor within the scope of his or her employment or engagement with Seller; (ii) grants to Seller a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property, to the extent such Intellectual Property does not constitute a "work made for hire" under applicable Law; and (iii) irrevocably waives any right or interest, including any moral rights, regarding such Intellectual Property, to the extent permitted by applicable Law. All assignments and other instruments necessary to establish, record, and perfect Seller's ownership interest in the Intellectual Property Registrations have been validly executed, delivered, and filed with the relevant Governmental Entities and authorized registrars.

(e) Seller's rights in the Company IP is valid, subsisting, and enforceable. Seller has taken reasonable steps to maintain the Company IP and to protect and preserve the confidentiality of all trade secrets included in the Company IP. All of the Intellectual Property Assets are valid and enforceable, and all Intellectual Property Registrations and Intellectual Property Agreements are subsisting and in full force and effect. Seller has taken all reasonable and necessary steps to maintain and enforce the Company IP and to preserve the confidentiality of Trade Secrets included in the Company IP, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements. 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 payment of any additional amounts with respect to, or require the consent of any other Person in respect of, Seller's right to own or use any Company IP in the conduct of its business as currently conducted and as proposed to be conducted by Buyer as of the Closing Date. Except as provided on Section 4.11(e) of the Disclosure Schedules, immediately following the Closing, the Company IP will be owned or available for use by Buyer on the same (or better) terms as they were owned or available for use by Seller immediately prior to the Closing.

(f) The conduct of the Business, as currently and formerly conducted and as proposed to be conducted by Buyer as of the Closing Date, including the use of the Company IP in connection therewith, and the content, products, processes, and services of Seller in the operation of the Business, have not infringed, misappropriated, or otherwise violated and will not, as transferred to Buyer on the Closing Date, 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, nor is infringing, misappropriating, or otherwise violating, any Intellectual Property Assets or Intellectual Property Agreements.

(g) There are no Actions pending or, to Seller's Knowledge, threatened: (i) alleging any infringement, misappropriation, or violation of the Intellectual Property of any Person by Seller; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Assets or Seller's rights with respect to any Company IP, in each case; or (iii) by Seller, or any other Person alleging any infringement, misappropriation, or other violation by any Person of any Intellectual Property Assets. Seller is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. Seller 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 Intellectual Property Assets or Seller's rights with respect to any Company IP, in each case.

(h) Condition of IT Systems. All IT Systems are in good working condition and are sufficient for the operation of the Business as currently conducted and as proposed to be conducted by Buyer as of the Closing Date. There has been no malfunction, failure, continued substandard performance, or to Seller's Knowledge, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the IT Systems that has resulted or is reasonably likely to result in disruption or damage to Seller's operations. Seller has taken commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of its IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(i) Data Privacy Laws. Seller has complied in all respects 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 Business and Seller's operations. To Seller's Knowledge Seller has never (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 Entity or other Person concerning Seller'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, in each case in connection with the Business and Seller's operations, and to Seller's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

(j) Technical Documentation. Any technical documentation related to and a part of the Purchased Assets includes the source code, system documentation, statements of principles of operation, and schematics for the relevant Business software program, as well as any pertinent commentary or explanation that may be necessary to render such materials understandable and useable by a trained computer programmer.

(k) Software Developers, Advertisers, Software Customers and Site Visitors. Section 4.11(k) of the Disclosure Schedules contains a true and complete list of the software developers and advertisers with whom Seller has done business within two (2) years prior to the Closing Date. The relationships of Seller with the persons listed and with whom Seller has done business since January 1, 2022 are good commercial working relationships, and no such person (i) has canceled or otherwise terminated, or, to Seller's Knowledge, threatened to cancel or terminate, its relationship with Seller, or (ii) decreased or limited materially, or, to Seller's Knowledge, threatened to decrease or limit materially, its business done with Seller. There is no reason to believe that any such person would not continue its business relationship with Buyer following the Closing on substantially the same terms as heretofore with Seller.

Section 4.12 Inventory. All Inventory, 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 Inventory is owned by Seller free and clear of all 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 Seller.

Section 4.13 Accounts Receivable. Except as set forth on Section 4.13 of the Disclosure Schedules, 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 Seller 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 Seller 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) are collectible in full within thirty (30) days after billing. 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 Business have been determined in accordance with Seller's past practices, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 4.14 Customers and Suppliers.

(a) Section 4.14(a) of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to Seller for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two (2) most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. Seller has not received any notice, and has no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) Section 4.14(b) of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom Seller has paid consideration for goods or services rendered in an amount greater than or equal to \$10,000 for each of the two (2) most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. Seller has not received any notice, and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business

Section 4.15 Insurance. Section 4.15 of the Disclosure Schedules sets forth (a) 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, fiduciary liability and other casualty and property insurance maintained by Seller or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the “**Insurance Policies**”); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Seller since the inception of Seller. There are no claims related to the Business, the Purchased Assets or the Assumed Liabilities 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. Neither Seller nor any of its Affiliates 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 not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable 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. None of Seller or any of its Affiliates 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 Business and are sufficient for compliance with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 4.16 Legal Proceedings; Governmental Orders.

(a) There are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or, to Seller's Knowledge, circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business.

Section 4.17 Compliance With Laws; Permits.

(a) Except as set forth on Section 4.17(a) of the Disclosure Schedules, Seller has complied, and is now complying, with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) Except as would not nor would reasonably be expected to have a Seller Material Adverse Effect, all Permits required for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller 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, except to the extent as would not reasonably be expected to have Seller Material Adverse Effect. Section 4.17(b) of the Disclosure Schedules lists all current Permits issued to Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, 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 4.17(b) of the Disclosure Schedules.

Section 4.18 Environmental Matters.

(a) To Seller's Knowledge, Seller has complied, and is now complying, with all Environmental Laws. Seller has not received any notice from any Person that Seller, the Business or its assets, or any real property currently or formerly owned, leased, or used by Seller is or may be in violation of any Environmental Law or any applicable Law regarding Hazardous Materials.

(b) To Seller's Knowledge, there has not been any spill, leak, discharge, injection, escape, leaching, dumping, disposal, or Release of any kind of any Hazardous Materials in violation of any Environmental Law: (i) with respect to the business or assets of Seller; or (ii) at, from, in, adjacent to, or on any real property currently or formerly owned, leased, or used by Seller. To Seller's Knowledge, there are no Hazardous Materials in, on, about, or migrating to any real property currently or formerly owned, leased, or used by Seller, and such real property is not affected in any way by any Hazardous Materials.

Section 4.19 Employee Benefit Matters.

(a) Seller does not, and has never had, any pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit or other similar agreement, plan, policy, program or arrangement, in each case whether or not reduced to writing and whether funded or unfunded, including any "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, contributed to, or required to be contributed to by Seller for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which Seller 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 (each, a "**Benefit Plan**"). Seller does not, and has never had, any Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by Seller primarily for the benefit of employees of the Business outside of the United States (a "**Non-U.S. Benefit Plan**").

(b) Neither Seller nor any of its Affiliates has any commitment or obligation or has made any representations to any director, officer, employee, consultant or independent contractor of the Business, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(c) Except as set forth on Section 4.19 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, officer, employee, independent contractor or consultant of the Business to severance pay or any other payment in connection with their service to Seller; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (iv) 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.

Section 4.20 Employment Matters.

(a) Section 4.20(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business 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 sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions, bonuses or fees.

(b) Seller is not, and has not been for the past three (3) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been for the past three (3) years, any Union representing or purporting to represent any employee of Seller, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There have never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller or any employees of the Business. Seller has no duty to bargain with any Union.

(c) Seller is and has been in compliance with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, volunteers, interns, consultants and independent contractors of the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable 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, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by Seller as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. All employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Seller is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. There are no Actions against Seller pending, or to the 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 Business, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable 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, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

Section 4.21 Taxes.

(a) All Tax Returns required to be filed by Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller.

(d) All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid.

(e) Seller is not a party to any Action by any taxing authority. There are no pending or, to Seller's Knowledge, threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

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

(h) Seller is not, and has not been, a party to, or a promoter of, a “reportable transaction” within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).

(i) None of the Purchased Assets is (i) required to be treated as being owned by another person pursuant to the so-called “safe harbor lease” provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

(j) None of the Purchased Assets is tax-exempt use property within the meaning of Section 168(h) of the Code.

Section 4.22 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 Seller.

Section 4.23 Investment Representations.

(a) Purchase for Own Account, Etc. Seller (which for purposes of this Section 4.23 such definition shall include all of the holders of Seller's securities) is purchasing the Closing Share Consideration and the Earnout Share Consideration (the “Shares”) for Seller's own account for investment purposes only and not with a view towards the public sale or distribution thereof, except pursuant to sales that are exempt from the registration requirements of the Securities Act of 1933, as amended (the “**Securities Act**”) and/or sales registered under the Securities Act. Except for holders of simple agreements for future equity (“**SAFEs**”) issued by Seller which have certain rights in the event of a sale of substantially all of the Company's assets to receive proceeds from such sale, Seller further represents that he, she or it does not have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to any third person with respect to any of the Shares. Seller is a sophisticated investor and has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to Buyer, and is capable of evaluating the merits and risks of its investment in Buyer. Seller understands that it must bear the economic risk of this investment indefinitely, unless the Shares are registered pursuant to the Securities Act and any applicable state securities or blue sky laws or an exemption from such registration is available, and that Buyer has no present intention of registering the resale of any such Shares. Seller is able to bear the economic risk of this investment in the shares of Buyer Common Stock that may be delivered to such Seller (including a complete loss of such Seller's investment or a reduction in the price of Buyer Common Stock, whether at the time it is held by Seller). The Purchase Price for the Purchased Assets, including the price of the Shares when used in calculating the number of Shares to be delivered to Seller, was negotiated privately between the parties hereto.

(b) Accredited Investor Status; Bad Actors. Seller is an “Accredited Investor”, as that term is defined in Rule 501(a) of Regulation D. Seller was not incorporated for the specific purpose of acquiring the Shares. Neither the Seller nor any of its Affiliates, Representatives, directors, executive officers, other officers that may serve as a director or officer of the Seller, or any company in which Seller invests, have taken any of the actions set forth in, and is not subject to, the disqualification provisions of Rule 506(d)(1) of the Securities Act.

(c) Reliance on Exemptions. Seller understands that the Shares are being offered and sold to Seller in reliance upon specific exemptions from the registration requirements of United States federal and state securities laws, and that Buyer is relying upon the truth and accuracy of, and Seller's compliance with, the representations, warranties, agreements, acknowledgments and understandings of Seller set forth herein in order to determine the availability of such exemptions and the eligibility of Seller to acquire the Shares.

(d) Information. All materials relating to the business, finances and operations of Buyer and materials relating to the offer and sale of the Shares which have been specifically requested by Seller or its counsel have been made available to Seller and its counsel, if any. Seller understands that its investment in the Shares involves a high degree of risk, including the risk of loss of its entire investment in the Shares. Seller has sought such accounting, legal and tax advice as Seller has considered necessary to make an informed investment decision with respect to his, her or its acquisition of the Shares.

(e) Governmental Review. Seller understands that no United States federal or state agency or any other government or governmental agency has passed upon or made any recommendation or endorsement of the Shares.

(f) Transfer or Resale. Seller understands that: (i) the sale or resale of the Shares have not been and are not being registered under the Securities Act or any state securities laws, and the Shares may not be transferred unless (A) the transfer is made pursuant to and as set forth in an effective registration statement under the Securities Act covering the Shares, or (B) such Purchaser shall have delivered to the Company an opinion of counsel (which opinion shall be in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Shares to be sold or transferred may be sold or transferred pursuant to an exemption from such registration, or (C) sold under and in compliance with Rule 144 promulgated under the Securities Act (including any successor rule, “**Rule 144**”); or (D) sold or transferred to an affiliate of Seller that agrees to sell or otherwise transfer the Shares only in accordance with the provisions of this Section 2(f) and that is an Accredited Investor; and (ii) neither the Buyer nor any other person is under any obligation to register such Shares under the Securities Act or any state securities laws.

(g) **Legends.** Seller understands that there are substantial restrictions on the transferability of the Shares as more specifically set forth above, and that the certificates (or book-entry statements) shall bear a restrictive legend in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR IN ANY OTHER JURISDICTION. THE SECURITIES REPRESENTED HEREBY MAY NOT BE OFFERED, SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER APPLICABLE SECURITIES LAWS UNLESS OFFERED, SOLD OR TRANSFERRED PURSUANT TO AN AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THOSE LAWS.

(h) Seller represents that it has satisfied itself as to the full observance of the laws of its jurisdiction in connection with the purchase of the Shares, including: (a) the legal requirements within its jurisdiction for the purchase of the Shares; (b) any foreign exchange restrictions applicable to such purchase; (c) any governmental or other consents that may need to be obtained; and (d) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Shares. Seller's receipt of, and its continued beneficial ownership of the Shares, will not violate any applicable securities or other laws of the jurisdiction of its residence.

Section 4.24 Solvency. Immediately after giving effect to the transactions contemplated hereby, Seller shall be solvent and shall: (a) be able to pay its debts as they become due; and (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities). No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Seller. In connection with the transactions contemplated hereby, Seller has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.25 Full Disclosure. No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. To Seller's Knowledge, there is no event or circumstance which Seller has not disclosed to Buyer which could reasonably be expected to have a Material Adverse Effect.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization of Buyer. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 5.02 Authority of Buyer. 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) 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 5.03 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 certificate of incorporation, by-laws or other 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) except as set forth in Section 5.03 of the Disclosure Schedules, 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 Buyer Material Adverse Effect.

Section 5.04 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 5.05 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 5.06 SEC Filings; Financial Statements.

(a) Buyer has filed all forms, reports, statements, schedules and other documents required to be filed by it with the United States Securities and Exchange Commission (the "**SEC**") since December 31, 2022 under the Securities Act or the Exchange Act (collectively, the "**Buyer SEC Reports**"). To Buyer's Knowledge, the Buyer SEC Reports at the time they were filed and, if amended, as of the date of such amendment, complied in all material respects with all applicable requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations promulgated thereunder. To Buyer's Knowledge, no subsidiary of Buyer is required to file any form, report, statement, schedule or other document with the SEC under the Securities Act or the Exchange Act.

(b) To Buyer's Knowledge, each of the consolidated financial statements (including, in each case, any notes thereto) contained (or incorporated by reference) in the Buyer SEC Reports was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted to be reported within Quarterly Reports on Form 10-Q) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of Buyer and its consolidated Subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which are not, in the aggregate, material to Buyer and its Subsidiaries, taken as a whole).

(c) As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Buyer SEC Reports that would reasonably be expected to delay Buyer's performance of its obligations under the Ancillary Documents. To Buyer's Knowledge, none of the Buyer SEC Reports is the subject of ongoing SEC review that would reasonably be expected to delay Buyer's performance of its obligations under the Ancillary Documents.

(d) For purposes of this Section 5.08, "Buyer's Knowledge" means the actual knowledge of Ann Hand, after due inquiry.

Section 5.07 Buyer Common Stock. Except as otherwise understood and acknowledged by Seller in Section 4.23, the Buyer Common Stock, when issued, sold and delivered at the Closing in accordance with this Agreement, will be validly issued, fully paid and nonassessable and free and clear of any Encumbrance, adverse claim, restriction on sale, transfer or voting (other than restrictions imposed by applicable securities Laws), preemptive right, option or other right to acquire or purchase.

Section 5.08 Full Disclosure. No representation or warranty by Buyer in this Agreement and no statement contained in any certificate or other document furnished or to be furnished to Seller pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE VI
COVENANTS**

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (x) conduct the Business in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact its current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall:

- (a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;
 - (b) pay the debts, Taxes and other obligations of the Business when due;
 - (c) continue to collect Accounts Receivable in a manner consistent with past practice, without discounting such Accounts Receivable;
 - (d) maintain the properties and assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
 - (e) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;
 - (f) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation;
 - (g) perform all of its obligations under all Assigned Contracts;
 - (h) maintain the Books and Records in accordance with past practice;
-

- (i) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets; and
- (j) not take or permit any action that would cause any of the changes, events or conditions described in Section 4.06 to occur.

Section 6.02 Access to Information. From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives full and free 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 Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business. Without limiting the foregoing, Seller shall permit Buyer and its Representatives to conduct environmental due diligence of the Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or from the Real Property. Any investigation pursuant to this Section 6.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. 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 in this Agreement.

Section 6.03 No Solicitation of Other Bids.

(a) Seller shall not, and shall not authorize or permit any of its Affiliates 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 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. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets.

(b) In addition to the other obligations under this Section 6.03, 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 6.03 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 6.04 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 Seller Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller 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; and

(iv) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.16 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this Section 6.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.02 and Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules, except that, (i) if such representation, warranty or agreement had been true in all respects as of the date of this Agreement, (ii) the occurrence of such an event would not, and does not, constitute a breach or inaccuracy of such representation, warranty or agreement, as determined in Buyer's sole discretion, (iii) Seller informs Buyer as to representation, warranty, or agreement so affected, then the delivery of notice of the occurrence of such event shall, after one (1) Business Day following Buyer's receipt thereof, modify the representation, warranty or agreement and supplement the Disclosure Schedules for purposes of the accuracy of the affected provision at Closing, if such provision is required to be accurate at such time.

Section 6.05 Employees and Employee Benefits.

(a) Except for each signatory to the Employment Agreements, as of the Closing Date, Seller shall terminate all employees of the Business that can be terminated pursuant to applicable Law on the Closing Date, and, at Buyer's sole discretion, Buyer may offer employment, on an "at will" basis, to any or all of such employees.

(b) Seller shall be solely responsible, and 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 Business, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time prior to the Closing Date, and Seller shall pay all such amounts to all entitled persons on or prior to the Closing Date, in compliance with applicable Law for those employees who are terminated, or at the next regular payroll period following the Closing Date for those employees, if any, who remain employed with Seller from and after the Closing Date.

(c) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring prior to the Closing. Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business, which claims relate to events occurring prior to the Closing. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

Section 6.06 Confidentiality. From and after the Closing, Seller 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 Business, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, any of its 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 or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, to the extent permitted by Law or Governmental Authority, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.07 Non-Competition; Non-Solicitation.

(a) For a period of three (3) years commencing on the Closing Date (the "Restricted Period"), Seller shall not, and shall not permit any of its Affiliates to, 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) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of Seller and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. 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 more than five percent (5%) of any class of securities of such Person.

(b) During the Restricted Period, Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by Buyer pursuant to Section 6.05(a) or is or was employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided, that* nothing in this Section 6.07(b) shall prevent Seller or any of its Affiliates from hiring (i) any employee whose employment has been terminated by Buyer or (ii) after one hundred eighty (180) days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) Seller acknowledges that a breach or threatened breach of this Section 6.07 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 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).

(d) Seller acknowledges that the restrictions contained in this Section 6.07 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 6.07 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 6.07 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 6.08 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions 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 Buyer shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 and Section 5.03 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) 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 or Buyer 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. To the extent permitted by Law, 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.

(e) Notwithstanding the foregoing, nothing in this Section 6.08 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 or any of its 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 Buyer Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the Ancillary Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 6.09 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of three (3) years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and

(ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies, scans or electronic copies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of three (3) years following the Closing, Seller shall:

(i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies, scans or electronic copies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 6.09 where such access would violate any Law.

Section 6.10 Closing Conditions From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

Section 6.11 Public Announcements. Unless otherwise required by applicable Law or rules of the Primary Trading Market (based upon the reasonable advice of counsel), no party 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 or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.12 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 6.13 Receivables. From and after the Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, Seller or its Affiliate shall remit such funds to Buyer within five (5) Business Days after its receipt thereof. From and after the Closing, if Buyer or its Affiliate receives or collects any funds relating to (i) any of the receivables set forth on Section 6.13 of the Schedules, or (ii) any Excluded Asset, in each case, Buyer or its Affiliate shall remit any such funds to Seller within five (5) Business Days after its receipt thereof.

Section 6.14 Post-Closing Assignment of Contracts. To the extent not received prior to the Closing Date, Seller shall use its best efforts to obtain all necessary consents listed on Section 4.03(c) of the Disclosure Schedules within sixty (60) days from the Closing Date.

Section 6.15 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Seller 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 6.16 Tax Clearance Certificates. If required by applicable Law, Seller shall notify all of the taxing authorities in the jurisdictions that impose Taxes on Seller or where Seller has a duty to file Tax Returns of the transactions contemplated by this Agreement in the form and manner required by such taxing authorities, if the failure to make such notifications or receive any available tax clearance certificate (a “**Tax Clearance Certificate**”) could subject the Buyer to any Taxes of Seller. If any taxing authority asserts that Seller is liable for any Tax, Seller shall promptly pay any and all such amounts and shall provide evidence to the Buyer that such liabilities have been paid in full or otherwise satisfied.

Section 6.17 Dissolution; Bankruptcy Filings. Seller hereby agrees and covenants that until such time as the final Earnout Period expires and such final Earnout Consideration is paid, Seller shall not dissolve, commence any bankruptcy filings, or otherwise enter into any receivership proceedings.

Section 6.18 Power of Attorney. Effective on the Closing Date, Seller hereby constitutes and appoints each of Buyer, Ann Hand, and Clayton Haynes the true and lawful attorneys of Seller, with power of substitution, in the name of Seller or Buyer, but on behalf of and for the benefit of Buyer: (a) to demand and receive from time to time any and all of the Purchased Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof; (b) to institute, prosecute, compromise and settle any and all actions or proceedings against third parties that Buyer may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Purchased Assets; (c) to defend or compromise any and all actions or proceedings against third parties in respect of any of the Business or Purchased Assets; and (d) to do all such acts and things necessary to fulfill the transactions contemplated under this Agreement. Seller acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason.

Section 6.19 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 and the Ancillary Documents.

**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 the condition that 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.

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 contained in Section 4.01, Section 4.02, Section 4.04, Section 4.11, Section 4.22, and Section 4.23, the representations and warranties of Seller contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Seller Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Seller Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in in Section 4.01, Section 4.02, Section 4.04, Section 4.11, Section 4.22, and Section 4.23 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller 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, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) No Action shall have been commenced against Buyer or Seller, 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 4.03(c) of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing other than consents to Assigned Contracts not obtained as of the Closing, the obtainment of which as of on or prior to the Closing Date shall be deemed waived by Buyer for purposes of Closing and subject to Section 2.06, Section 2.10 and Section 6.14.

(e) Except for Tax Clearance Certificates, Seller shall have received all necessary consents, authorizations, orders and approvals, if any, from Governmental Authorities, in form and substance reasonably satisfactory to Buyer and Seller, and no such consent, authorization, order and approval shall have been revoked.

(f) From the date of this Agreement, there shall not have occurred any Seller 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 Seller Material Adverse Effect.

(g) Seller shall have delivered to Buyer duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(a).

(h) Buyer shall have received all Permits that are transferable by Seller to Buyer and that, without such Permits, Buyer would be unable to conduct the Business as conducted in all material respects by Seller as of the Closing Date.

(i) All Encumbrances relating to the Purchased Assets shall have been released in full, and Seller shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its sole discretion, of the release of such Encumbrances.

(j) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied (the "**Seller Closing Certificate**").

(k) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller 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.

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

(m) Seller shall have received the unanimous approval of its stockholders to enter into this Agreement and the consummation of the transactions contemplated hereby pursuant to, and in accordance with, all Applicable Laws.

(n) Seller 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. The obligations of Seller 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 5.01, Section 5.02 and Section 5.04, 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 (in the case of any representation or warranty qualified by materiality or Buyer Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Buyer Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 5.01, Section 5.02 and Section 5.04, shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such 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.

(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) Buyer shall have delivered to Seller duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(b).

(e) Seller shall have received evidence reasonably satisfactory to Seller of the cancellation of all promissory notes and amounts due thereunder in connection with the Operating Capital Advances.

(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 (the “**Buyer Closing Certificate**”).

(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 INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is one year from the Closing Date; *provided, that* the representations and warranties in (i) subsection (a) only of Section 4.01, Section 4.02, Section 4.08, Section 4.09, subsections (d) through (j) of Section 4.11, Section 4.22, Section 5.01, Section 5.02 and Section 5.04 shall survive indefinitely, (ii) Section 4.18 shall survive for a period of four (4) years after the Closing, and (iii) Section 4.19 and Section 4.21, and shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this ARTICLE VIII and elsewhere in this Agreement, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the “**Buyer Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the Ancillary Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the Ancillary Documents or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability; or

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising prior to the Closing Date, or existing or arising on the Closing Date to the extent such Third Party Claim arises from Seller’s improper action or inaction with respect to Buyer’s purchase of the Purchased Assets.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the “**Seller Indemnitees**”) against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(c) any Assumed Liability.

Section 8.04 Certain Limitations. The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds Fifty Thousand and 00/100 Dollars (\$50,000.00) (the “**Basket**”), in which event Seller shall be required to pay or be liable for all such Losses in excess of the Basket amount. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02(a) shall not exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (the “**Cap**”).

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Basket, in which event Buyer shall be required to pay or be liable for all such Losses in excess of the Basket Amount. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.04(a) and Section 8.04(b) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in subsection (a) only of Section 4.01, Section 4.02, Section 4.08, Section 4.09, subsections (d) through (j) of Section 4.11, Section 4.18, Section 4.19, Section 4.21, Section 4.22, Section 5.01, Section 5.02 and Section 5.04.

(d) For purposes of this ARTICLE VIII, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Buyer Material Adverse Effect or Seller Material Adverse Effect, as applicable, or other similar qualification contained in or otherwise applicable to such representation or warranty.

(e) The amount of any Loss for which indemnification is provided under this ARTICLE VIII shall be net of any amount actually recovered by the Indemnified Party under insurance policies with respect to such Loss.

Section 8.05 Indemnification Procedures. The party making a claim under this ARTICLE VIII is referred to as the “**Indemnified Party**”, and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the “**Indemnifying Party**”.

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a “**Third Party Claim**”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, or defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.06) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Payments; Contingent Consideration Setoff.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within thirty (30) Business Days of such final, non-appealable adjudication by (i) wire transfer of immediately available funds, (ii) transfer of Buyer Common Stock, the value of which shall be the higher of the Closing Share Price and the VWAP of the five (5) Trading Days immediately preceding the date the Buyer Common Stock is transferred to meet indemnity obligations, or (iii) offset as set forth in Section 8.06(b), below. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such thirty (30) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 8%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(b) Any Losses payable to a Buyer Indemnitee pursuant to this ARTICLE VIII shall be satisfied: (i) from any Earnout Consideration that may be payable under Section 2.07, provided Buyer notifies Seller in writing that Buyer intends to make such set-off at least ten (10) calendar days prior to the date such Earnout Payment is payable, and; and (ii) to the extent the amount of Losses exceeds the Earnout Consideration payable, from Seller.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 Effect of Investigation. Except as set forth in Section 8.04(d), the representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 7.02 or Section 7.03, as the case may be.

Section 8.09 Exclusive Remedies. Subject to Section 6.07 and Section 10.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VIII; *provided, however*, this Section 8.09 shall in no way limit or prevent Buyer from adjusting the Purchase Price pursuant to Section 2.06. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VIII, and the adjustments to the Purchase Price set forth in Section 2.06. Nothing in this Section 8.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

**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 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 breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller 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 within ten (10) days of Seller's receipt of written notice of such breach from Buyer;

(ii) the Board of Directors of Seller changes the Seller Board Recommendation or otherwise chooses to terminate this Agreement to pursue an alternative transaction; or

(iii) 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 May 2, 2023, 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;

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

(i) Seller is not then in material breach of any provision of this Agreement and there has been a 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 which are set forth in Section 7.01 or Section 7.03 and are material to the transfer of the Purchased Assets to Buyer or Buyer's ability to conduct the Business in all material respects as Seller conducted it prior to Closing shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by May 2, 2023 (nor waived nor deferred by Buyer), unless such failure shall be due to the failure of Seller 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, provided, that, if there are any Assigned Contracts for which Seller has not obtained consent as of the Closing, Buyer shall waive such condition subject to its fulfillment within sixty (60) days following Closing pursuant to Sections 6.14 and 2.10; 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.

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

(a) as set forth in this ARTICLE IX and Section 6.06 (except that, for purposes of this ARTICLE IX, references to "**Business**" in Section 6.06 shall be construed to mean the business of the Buyer including the transactions contemplated but not consummated by this Agreement, not the business of the Seller) and ARTICLE X hereof;

(b) in the event this Agreement is terminated by Buyer pursuant to Section 9.01(b)(i) or (iii), then Seller shall repay all Operating Capital Advances plus interest on the aggregate amount of the Operating Capital Advances from the date of the initial Operating Capital Advance in an amount equal to the interest rate set forth in the promissory note applicable to each Operating Capital Advance (the "**Termination Repayment**"), which shall be due and payable on the date that is six (6) months from the date this Agreement is terminated;

(c) in the event this Agreement is terminated for any other reason other than the fault of Seller, Buyer shall forgive Seller for the repayment of the Operating Capital Advances as a break up fee; and

(d) that nothing herein shall relieve any party hereto from liability for any grossly negligent or willful breach of any provision hereof.

**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:

Melon, Inc.
Josh Neuman
c/o Melon Inc.
56B 5th Street Lot 1, #5807
Carmel CA 93921
E-mail: josh@controlmgmt.com
Attention: Josh Neuman

with a copy (which will not constitute notice to Buyer) to:

Raines Feldman LLP
1800 Avenue of the Stars, 12th Floor
Los Angeles, CA 90067
E-mail: jrichter@raineslaw.com
Attention: Jonathan Richter

If to Buyer, to:

Super League Gaming, Inc.
2912 Colorado Ave., Suite 203
Santa Monica, CA 90404
Attention: Ann Hand, CEO

with a copy (which will not constitute notice to Buyer) to:

Disclosure Law Group, a Professional Corporation
655 West Broadway, Suite 870
San Diego, CA 92101
Attention: Jack Kennedy
Email: jkennedy@disclosurelawgroup.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 6.07(d), 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 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 or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its 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 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) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

(b) Each of the parties hereto irrevocably agrees that any legal Action or proceeding with respect to this Agreement, and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by any other party hereto or its successors or assigns shall be brought and determined exclusively in the State Court of California, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such action or proceeding, in the federal district courts within the State of California . Each of the parties hereto agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 10.02 or in such other manner as may be permitted by applicable Laws, will be valid and sufficient service thereof. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court or tribunal other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim, or otherwise, in any action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder: (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with this Section 10.10(b); (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT 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 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 Reserved.

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.

[SIGNATURE PAGE FOLLOWS]

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.

“SELLER”
MELON, INC
a Delaware corporation

By /s/ Josh Neuman
Name: Josh Neuman
Title: President and CEO

“BUYER”
SUPER LEAGUE GAMING, INC.
a Delaware corporation

By /s/ Ann Hand
Name: Ann Hand
Title: Chief Executive Officer

[SCHEDULES AND EXHIBITS INTENTIONALLY OMITTED]

**CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES AA-4 PREFERRED STOCK
OF
SUPER LEAGUE GAMING, INC.**

It is hereby certified that:

1. The name of the Company (hereinafter called the "**Company**") is Super League Gaming, Inc., a Delaware corporation.
2. The Certificate of Incorporation (the "**Certificate of Incorporation**") of the Company authorizes the issuance of Ten Million (10,000,000) shares of preferred stock, \$0.001 par value per share, of which Nine Million Nine Hundred Seventy Seven Thousand One Hundred Seventy Three (9,977,173) shares have not been designated or issued, and expressly vests in the Board of Directors of the Company the authority to issue any or all of said shares in one (1) or more series and by resolution or resolutions to establish the designation and number and to fix the relative rights and preferences of each series to be issued.
3. The Board of Directors of the Company, pursuant to the authority expressly vested in it as aforesaid, has adopted the following resolutions creating a Series AA-4 issue of Preferred Stock:

RESOLVED, that One Thousand Twenty-Six (1,026) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series AA-4 Convertible Preferred Stock, \$0.001 par value per share, and shall possess the rights and preferences set forth below:

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"**Affiliate**" means any person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act. A Person shall be regarded as in control of the Company if the Company owns or directly or indirectly controls more than fifty percent (50%) of the voting stock or other ownership interest of the other person, or if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such person.

"**Alternate Consideration**" shall have the meaning set forth in Section 7(d).

"**Attribution Parties**" shall have the meaning set forth in Section 6(e).

"**Beneficial Ownership Limitation**" shall have the meaning set forth in Section 6(e).

"**Business Day**" means any day except Saturday, Sunday, and any day which shall be a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

“**Buy-In**” shall have the meaning set forth in Section 6(d)(iv).

“**Certificate of Designations**” means this Certificate of Designation of Preferences, Rights and Limitations of Series AA-4 Preferred Stock.

“**Commission**” means the United States Securities and Exchange Commission.

“**Common Stock**” means the Company’s common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Common Stock Equivalents**” means any securities of the Company or the Subsidiaries of the Company, whether or not vested or otherwise convertible or exercisable into shares of Common Stock at the time of such issuance, which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock, and excluding shares of Common Stock issuable upon conversion of the Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, Series AA-4 Preferred Stock and any and all sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof.

“**Company Conversion Notice**” means a notice delivered by the Company to effect a Mandatory Conversion of all the outstanding Series AA Preferred Stock (which for these purposes shall include the shares of Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, Series AA-4 Preferred Stock, along with any and all sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof); provided that the effective date of such Mandatory Conversion shall be no less than ten (10) Business Days following the date that such notice is deemed to have been given.

“**Conversion Amount**” means the Stated Value at issue.

“**Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Conversion Price**” means \$0.4642 subject to adjustment as set forth in Section 7; *provided, however*, the Conversion Price shall not be less than the Conversion Price Floor.

“**Conversion Price Floor**” means the amount, in dollars, determined by multiplying (i) the Conversion Price by (ii) twenty percent (20%).

“**Conversion Shares**” means the shares of Common Stock issuable upon conversion of the shares of Series AA-4 Preferred Stock in accordance with the terms hereof.

“Deemed Liquidation Event” means any of the following, unless the Majority Holders elect otherwise by written notice sent to the Company at least five (5) business days prior to the effective date of any such event:

- (a) a merger or consolidation in which
 - (i) the Company is a constituent party or
 - (ii) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one (1) or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company.

The Company shall not have the power to effect a Deemed Liquidation Event unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Company in such Deemed Liquidation Event shall be allocated to the holders of capital stock of the Company in accordance with Section 5 hereto.

“Dividend Shares” shall have the meaning set forth in Section 3.

“Effective Date” means the date that this Certificate of Designations is filed with the Secretary of State of Delaware.

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

“Five-Day Adjustment VWAP” means the VWAP for the five (5) Trading Days immediately preceding the Second Anniversary.

“**Fundamental Transaction**” shall have the meaning set forth in Section 7(d).

“**Holder**” shall mean an owner of shares of Series AA-4 Preferred Stock.

“**Junior Securities**” means the Common Stock and any other class or series of capital stock of the Company hereafter created which does not expressly rank senior or pari passu with or senior to the Series AA-4 Preferred Stock (which for these purposes shall include the Series AA Preferred Stock, Series AA-2 Preferred Stock, and Series AA-3 Preferred Stock, along with any and all sub-series designated as Series AA-5 Preferred Stock, Series AA-6 Preferred Stock, and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges.

“**Liquidation**” shall have the meaning set forth in Section 5(a).

“**Majority Holders**” shall mean the Holders of 51% or more of the then issued and outstanding shares of all Series AA Preferred Stock, which for these purposes shall include the shares of Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, and Series AA-4 Preferred Stock, along with any and all sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof.

“**Mandatory Conversion**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Date**” shall have the meaning set forth in Section 6(b).

“**Mandatory Conversion Determination**” shall have the meaning set forth in Section 6(b).

“**Minimum Trading Volume**” means average trading during the prior twenty (20) Trading Days of shares with a minimum value of \$750,000, subject to adjustment in connection with any of the events in Section 7(a)(i).

“**New York Courts**” shall have the meaning set forth in Section 8(d).

“**Notice of Conversion**” shall have the meaning set forth in Section 6(a).

“**Optional Conversion Date**” shall have the meaning set forth in Section 6(a).

“**Original Issue Date**” means the date of the first issuance of any shares of Series AA-4 Preferred Stock regardless of the number of transfers of any particular shares of Series AA-4 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series AA-4 Preferred Stock.

“**Parity Securities**” means any class or series of capital stock of the Company hereinafter created that expressly ranks pari passu with the Series AA-4 Preferred Stock (which for these purposes shall include the Series A Preferred, Series AA Preferred Stock, Series AA-2 Preferred Stock, and Series AA-3 Preferred Stock, along with any and all sub-series designated as Series AA-5 Preferred Stock, Series AA-6 Preferred Stock, and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation as well as any other rights, preferences and privileges. The only Parity Securities existing as of the date hereof are the Series A Preferred, Series AA Preferred Stock, Series AA-2 Preferred Stock, and Series AA-3 Preferred Stock.

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

“**PIK Shares**” shall have the meaning set forth in Section 3.

“**Preferred Stock**” means the Company’s preferred stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed into.

“**Primary Market Limitation**” shall have the meaning set forth in Section 6(f).

“**Purchase Rights**” shall have the meaning set forth in Section 7(b).

“**Second Anniversary**” shall mean April 19, 2025.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Senior Securities**” shall be any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series AA-4 Preferred Stock (which for these purposes shall include the Series A Preferred, Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, and all sub-series designated as Series AA-5 Preferred Stock, Series AA-6 Preferred Stock, and so on, that may be authorized following the date hereof) with respect to the distribution of assets on Liquidation, as well as any other rights, preferences and privileges. No Senior Securities exist as of the date hereof.

“**Series A Preferred Stock**” shall mean, unless otherwise stated herein, Five Thousand Three Hundred and Fifty Nine (5,359) shares of Series A Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 22, 2022.

“**Series A-2 Preferred Stock**” shall mean, unless otherwise stated herein, One Thousand Two Hundred Ninety-Seven (1,297) shares of Series A-2 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 28, 2022.

“Series A-3 Preferred Stock” shall mean, unless otherwise stated herein, One Thousand Seven Hundred Thirty-Three (1,733) shares of Series A-3 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on November 30, 2022.

“Series A-4 Preferred Stock” shall mean, unless otherwise stated herein, One Thousand Nine Hundred Thirty-Four (1,934) shares of Series A-4 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on December 22, 2022.

“Series A-5 Preferred Stock” shall mean, unless otherwise stated herein, Two Thousand Two Hundred Ninety-Nine (2,299) shares of Series A-5 Preferred Stock which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on January 31, 2023.

“Series A Preferred” shall mean, collectively, the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock, Series A-5 Preferred Stock, and any and all sub-series designated Series A-6 Preferred Stock, Series A-7 Preferred Stock and so on, that may be authorized following the date hereof.

“Series AA Preferred Stock” shall mean, unless otherwise stated herein, Seven Thousand Six Hundred Eighty (7,680) shares of Series AA Preferred Stock, which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on April 19, 2023.

“Series AA-2 Preferred Stock” shall mean, unless otherwise stated herein, One Thousand Five Hundred (1,500) shares of Series AA-2 Preferred Stock, which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on April 20, 2023.

“Series AA-3 Preferred Stock” shall mean, unless otherwise stated herein, One Thousand Twenty Five (1,025) shares of Series AA-3 Preferred Stock, which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was filed with the Delaware Secretary of State on April 28, 2023.

“Series AA-4 Preferred Stock” shall have the meaning set forth in Section 2.

“Share Delivery Date” shall have the meaning set forth in Section 6(d).

“Stated Value” means \$1,000.00 per share of Series AA Preferred Stock.

“Stockholder Approval” means the receipt by the Company of the approval, by vote or action by written consent, of a majority of the issued and outstanding voting securities of the Company, voting on an as-converted basis, together as a single class with respect to (i) the increase in authorized Common Stock of the Company, (ii) issuances of Common Stock in excess of the Primary Market Limitation or that could otherwise cause a “Change in Control” as required by the applicable Listing Rules of the Nasdaq Capital Market (the “**Listing Rules**”), (iii) adjustments to the Conversion Price pursuant to Section 7.1(a)(ii) and Section 7.1(a)(iii) hereto, and (iv) the issuance of additional Series AA Preferred pursuant to the exercise of additional investment rights pursuant to Section 6 of those certain Subscription Agreements, dated as of the Effective Date, by and between the Company and the holders of the Series AA Preferred Stock, with respect to the initial purchase of Series AA Preferred Stock; it being understood that no shares of Series AA Preferred shall vote in regard to the Stockholder Approval or the approval of any matters which would not be permitted by the Listing Rules.

“**Subsidiary**” means any subsidiary of the Company existing as of the Effective Date hereof and shall, where applicable, also include any direct or indirect subsidiary of the Company formed or acquired after the Effective Date.

“**Trading Day**” means a day on which the principal Trading Market is open for business.

“**Trading Market**” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“**Transfer Agent**” means Issuer Direct, the current transfer agent of the Company, with a mailing address of One Glenwood Avenue, Suite 1001, Raleigh, North Carolina 27603, a facsimile number of 919-481-6222 and an email address of info@issuerdirect.com, and any successor transfer agent of the Company.

Section 2. Designation and Authorized Shares. The series of Preferred Stock designated by this Certificate of Designations shall be designated as the Company’s Series AA-4 Convertible Preferred Stock (the “**Series AA-4 Preferred Stock**”) and the number of shares so designated shall be One Thousand Twenty-Six (1,026). So long as any Series AA-4 Preferred Stock are issued and outstanding, the Company shall not issue any Senior Securities or Parity Securities without the approval of the Majority Holders. The Series AA-4 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series AA-4 Preferred Stock.

Section 3. Dividends. Holders of shares of Series AA-4 Preferred Stock will be entitled to receive: (a) dividends payable as follows: a number of shares of Common Stock equal to twenty percent (20%) of the number of shares of Common Stock issuable upon conversion of the Series AA-4 Preferred Stock then held by such Holder on each of the 12 and 24 month anniversaries of the Effective Date (collectively, the “**PIK Shares**”) and (b) dividends equal, on an as-if-converted to shares of Common Stock basis, to and in the same form as dividends actually paid on shares of the Common Stock when, as, and if such dividends are paid on shares of the Common Stock. The dividends set forth in clause (a) of this Section 3 will be satisfied solely by delivery of shares of Common Stock. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the consummation of a Fundamental Transaction. The dividends set forth in clause (a) shall be accelerated and paid (to the extent such dividends that are otherwise payable on each of such anniversary dates was not previously paid) upon the Mandatory Conversion Date following any Mandatory Conversion as contemplated in Section 6(b) hereto. Notwithstanding the foregoing, to the extent that a Holder’s right to participate in any dividend of PIK Shares pursuant to clause (a) or any stock dividend declared on the Common Stock to which such Holder is entitled to participate pursuant to clause (b) of this Section 3 (“**Dividend Shares**”) would result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then such Holder shall not be entitled to participate in any such dividend to such extent (or in the beneficial ownership of any PIK Shares or Dividend Shares as a result of such dividend to such extent) and the portion of such PIK Shares and/or Dividend Shares that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder’s beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation.

Section 4. Voting Rights. On any matter presented to the stockholders of the Company for their action or consideration at any meeting of stockholders of the Company (or by written consent of stockholders in lieu of meeting), and subject to the limitations set forth in Section 6(e) and 6(f), each Holder of outstanding shares of Series AA-4 Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Series AA-4 Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, Holders of Series AA-4 Preferred Stock shall vote together with the holders of Common Stock as a single class. The Holders shall be entitled to the same notice of any regular or special meeting of the stockholders as may or shall be given to holders of Common Stock entitled to vote at such meetings. As long as any shares of Series AA-4 Preferred Stock are outstanding, the Company may not, without the affirmative vote of the Majority Holders voting as a separate class, (i) amend, alter or repeal any provision of this Certificate of Designations in a manner that adversely affects the powers, preferences or rights of the Series AA-4 Preferred Stock, (ii) increase the number of authorized shares of Series AA-4 Preferred Stock, (iii) issue, or obligate itself to issue Parity Securities or Senior Securities, (iv) authorize, create, incur, assume, guarantee or suffer to exist any indebtedness for borrowed money of any kind other than trade accounts payable in the ordinary course of business, or (v) entering into any agreement with respect to the foregoing. Notwithstanding anything contained herein to the contrary, no holder of Series AA-4 Preferred Stock shall be entitled to vote on any matter presented to the Company's stockholders relating to approving the conversion of such holder's Series AA-4 Preferred Stock into an amount in excess of the Primary Market Limitation. Notwithstanding anything contained herein, for the purposes of this Section 4, the outstanding shares of Series AA-4 Preferred Stock includes both the Series AA Preferred Stock, the Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, Series AA-4 Preferred Stock, and any and all sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof and shall take into account the number of whole shares of Common Stock into which the shares of Series AA-4 Preferred Stock (including the Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, and any other sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof) are convertible into as of the record date for determining stockholders entitled to vote on such matter.

Section 5. Liquidation.

(a) The Series AA-4 Preferred Stock shall, with respect to distributions of assets and rights upon the occurrence of any voluntary or involuntary liquidation, dissolution or winding-up of the Company (“**Liquidation**”) or Deemed Liquidation Event, rank: (i) junior to the Senior Securities, if any (ii) pari passu with the Parity Securities, if any and (iii) senior to the Junior Securities. For purposes hereof, references to Series AA-4 Preferred Stock in this Section 5 shall include the Series A Preferred, Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, and all sub-series designated Series AA-5 Preferred Stock, Series AA-6 Preferred Stock and so on that may be authorized following the date hereof.

(b) As of the date hereof, there are no outstanding Senior Securities, Parity Securities consist solely of Series A Preferred, Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series AA-4 Preferred Stock and other Parity Securities then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, and in the event of a Deemed Liquidation Event, the holders of shares of Series AA-4 Preferred Stock and other Parity Securities then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to one (1) times the applicable Original Issue Price, plus any dividends accrued but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Amounts**”).

(c) After the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Series AA-4 Preferred Stock and other Parity Securities then outstanding, the remaining assets of the Company available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Series AA-4 Preferred Stock and other Parity Securities then outstanding pursuant to Section 5(b), shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder.

Section 6 Conversion.

(a) Conversions at Option of Holder. Each share of Series AA-4 Preferred Stock (or fraction thereof) shall be convertible, at any time and from time to time, from and after the Original Issue Date at the option of the Holder thereof into that number of shares of Common Stock (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) determined by dividing the Stated Value by the Conversion Price then in effect. Holders shall effect conversions by providing the Company and the Transfer Agent, with the form of conversion notice attached hereto as Annex A (a “**Notice of Conversion**”). Each Notice of Conversion shall specify the number of shares of Series AA-4 Preferred Stock to be converted, the number of shares of Series AA-4 Preferred Stock owned prior to such conversion, the number of shares of Series AA-4 Preferred Stock owned subsequent to such conversion and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers such Notice of Conversion to the Company pursuant to Section 6 and in accordance with Section 9 (such date, the “**Optional Conversion Date**”). Such Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the shares of Series AA-4 Preferred Stock have been converted as of the Optional Conversion Date. If no Optional Conversion Date is specified in a Notice of Conversion, the Optional Conversion Date shall be the date that such Notice of Conversion and Cancellation Request are deemed delivered to the Company in accordance with Section 9. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. To effect conversions of shares of Series AA-4 Preferred Stock, a Holder shall not be required to surrender any Certificated Series AA-4 Preferred Stock to the Company unless all of the shares of Series AA-4 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series AA-4 Preferred Stock promptly following the Optional Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to the converting Holder, the determination of whether the Series AA-4 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series AA-4 Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder’s determination of whether the shares of Series AA-4 Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and how many shares of the Series AA-4 Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this Section and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(b) **Mandatory Conversion.** On the one year anniversary of the Original Issue Date, the Company may, in its discretion, convert (A) 50% of the outstanding shares of Series AA-4 Preferred if the volume-weighted average price of the Company's common stock over the previous ten (10) days as reported on the NASDAQ Capital Market (the "**VWAP**"), equals at least 250% of the Conversion Price, or (B) 100% of the outstanding shares of Series AA-4 Preferred if the VWAP equals at least 300% of the Conversion Price (as applicable, the "**Mandatory Conversion Date**" and together with an Optional Conversion Date, the "**Conversion Date**"), each outstanding share of Series AA-4 Preferred Stock will automatically convert (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)) into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Stated Value by the Conversion Price in effect on the Mandatory Conversion Date (a "**Mandatory Conversion**"); *provided, however*, the Company may not effect such Mandatory Conversion unless (I) such shares of Common Stock for which the shares of Series AA-4 Preferred Stock will be converted are either (i) registered pursuant to an effective registration statement, or (ii) may be resold without restriction pursuant to Rule 144 of the Securities Act, and (II) the Company's Common Stock has traded above the Minimum Trading Volume for a period of at least five (5) consecutive Trading Days. Within two Trading Days of (x) the Mandatory Conversion Date, if the shares of Series AA-4 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series AA-4 Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and an indemnity or security reasonably acceptable to the Company (which shall not include the posting of any bond) to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate), the Company shall deliver: (I) to each Holder, the Conversion Shares issuable upon conversion of such Holder's Series AA-4 Preferred Stock via the Certificated Preferred Stock, and (II) the PIK Shares issuable upon Mandatory Conversion under Section 3, to Holders as of the Mandatory Conversion Date; provided that, any failure by the Holder to return Certificated Series AA-4 Preferred Stock, if any, will have no effect on the Mandatory Conversion pursuant to this Section 6(b), which Mandatory Conversion will be deemed to occur on the Mandatory Conversion Date. To the extent that the Beneficial Ownership Limitation contained in Section 6(e) or the Primary Market Limitation contained in Section 6(f) applies to any Holder, such Holder shall within five Business Days of such Holder's receipt of the Company Conversion Notice, provide the Company with a written determination (a "**Mandatory Conversion Determination**"), delivered in accordance with Section 9, of whether such Holder's Series AA-4 Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Affiliates and Attribution Parties) and of how many shares of Series AA-4 Preferred Stock are convertible, and the submission of a Mandatory Conversion Determination shall be deemed to be such Holder's determination of the maximum number of shares of Series AA-4 Preferred Stock that may be converted, subject to the Beneficial Ownership Limitation or the Primary Market Limitation and the portion of the shares of Common Stock issuable upon such Mandatory Conversion hereunder that would cause such Holder to exceed the Beneficial Ownership Limitation or the Primary Market Limitation shall be held in abeyance for the benefit of such Holder until such time, if ever, as such Holder's beneficial ownership thereof would not result in such Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Company each time it delivers a Mandatory Conversion Determination that such determination has not violated the restrictions set forth in Section 6(e) or Section 6(f) and the Company shall have no obligation to verify or confirm the accuracy of such determination.

(c) Conversion Shares. The aggregate number of Conversion Shares which the Company shall issue upon conversion of the Series AA-4 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series AA-4 Preferred Stock to be converted, multiplied by the Stated Value, divided by the Conversion Price in effect at the time of the conversion.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares upon Conversion. Promptly after the applicable Conversion Date, but in any case within the earlier of (i) two (2) Trading Days and (ii) the Standard Settlement Period (as defined below) thereof (the "**Share Delivery Date**"), the Company shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Series AA-4 Preferred Stock pursuant to Section 6(a) or 6(b), as applicable, any PIK Shares to which the Holder is entitled pursuant to Section 3 that have not been previously issued, if any, and a wire transfer of immediately available funds in the amount of accrued and unpaid cash dividends, if any. Conversion Shares issuable hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with DTC through its Deposit or Withdrawal at Custodian system ("**DWAC**") if the Company is then a participant in such system and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Conversion Shares and PIK Shares, if any, to which the Holder is entitled pursuant to such conversion to the address specified by the Holder in the Notice of Conversion or the Company Conversion Notice, as the case may be. The Company shall (A) deliver (or cause to be delivered) to the converting Holder who has converted less than all of such Holder's Certificated Series AA-4 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series AA-4 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series AA-4 Preferred Stock converted. The Company agrees to maintain a transfer agent that is a participant in the DTC's FAST program so long as any shares of Series AA-4 Preferred Stock remain outstanding. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares upon an Optional Conversion If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, in addition to any other rights herein, the Holder shall be entitled to elect by written notice to the Transfer Agent, on behalf of the Company, at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Company shall promptly return to the Holder any Certificated Series AA-4 Preferred Stock delivered to the Company and the Holder shall promptly return to the Company the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute; Partial Liquidated Damages. The Company's obligation to issue and deliver the Conversion Shares upon conversion of Series AA-4 Preferred Stock in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by such Holder or any other person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Company of any such action that the Company may have against such Holder. If the Company fails to deliver to a Holder such Conversion Shares pursuant to Section 6(d)(i) by the Share Delivery Date applicable to such conversion, the Company shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Stated Value of Series AA-4 Preferred Stock being converted, \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion.

(iv) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Company fails for any reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Company shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series AA-4 Preferred Stock equal to the number of shares of Series AA-4 Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Company had timely complied with its delivery requirements under Section 6(c)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series AA-4 Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Company shall be required to pay such Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver the Conversion Shares upon conversion of the shares of Series AA-4 Preferred Stock as required pursuant to the terms hereof.

(v) Reservation of Shares Issuable Upon Conversion. The Company covenants that it will at all times reserve and keep available out of its authorized and unissued shares of Common Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series AA-4 Preferred Stock, not less than such aggregate number of shares of the Common Stock as shall be issuable (i) upon the conversion of all outstanding shares of Series AA-4 Preferred Stock (taking into account the adjustments and restrictions of Section 7) and (ii) in respect of the PIK Shares. The Company covenants that all Conversion Shares and PIK Shares shall, when issued, be duly authorized, validly issued, fully paid and nonassessable. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then-outstanding shares of Series AA-4 Preferred Stock (taking into account the adjustments and restrictions of Section 7), and payment of the PIK Shares, the Company shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of or as dividends on the Series AA-4 Preferred Stock. As to any fraction of a share which a Holder would otherwise be entitled to upon such conversion or in respect of any such dividend, the Company shall round up to the next whole share of Common Stock.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Series AA-4 Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Company shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Series AA-4 Preferred Stock and the Company shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

(e) Beneficial Ownership Limitation. The Company shall not effect any conversion of the Series AA-4 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series AA-4 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any Persons acting as a group together with such Holder or any of such Holder's Affiliates (such Persons, "Attribution Parties")) would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series AA-4 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series AA-4 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series AA-4 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 6(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "Beneficial Ownership Limitation" shall be 4.99% (or, at the written election of any Holder delivered to the Company pursuant to the terms of Section 9 prior to the issuance of any shares of Series AA-4 Preferred Stock, 9.99% but no in event higher than 9.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Series AA-4 Preferred Stock held by the applicable Holder. Upon delivery of a written notice to the Company, any holder may from time to time increase or waive (with such increase or waiver not effective until the sixty-first (61st) day after delivery of such notice) or decrease (immediately) the Beneficial Ownership Limitation provisions of this Section 6(e); *provided, however*, that the Holder shall not be entitled to increase or terminate the limitation contained in this Section 6(e) if the Holder has acquired (or if any of the Holder's Attribution parties has indirectly acquired) the Series AA-4 Preferred Stock with the purpose or effect of changing or influencing the control of the Company. The limitations contained in this Section 6(e) shall apply to a successor holder of Series AA-4 Preferred Stock.

(f) **Primary Market Limitation.** Unless the Company obtains the approval of its stockholders as required by the applicable rules of the applicable Trading Market for issuances of Common Stock in excess of such amount, the Company shall not effect any conversion of the Series AA-4 Preferred Stock, including, without limitation, a Mandatory Conversion, and a Holder shall not have the right to receive dividends hereunder or convert any portion of the Series AA-4 Preferred Stock, to the extent that, after giving effect to the receipt of dividends hereunder or conversion set forth on the applicable Notice of Conversion, the Holder, together with the Attribution Parties, would beneficially own in excess of the Primary Market Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock received as dividends or issuable upon conversion of the Series AA-4 Preferred Stock with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (i) conversion of the remaining, unconverted Series AA-4 Preferred Stock beneficially owned by such Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company subject to a limitation on conversion or exercise analogous to the limitation contained herein (including, without limitation, the Series AA-4 Preferred Stock) beneficially owned by such Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 6(f), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith (other than as it relates to a Holder relying on the number of shares issued and outstanding as provided by the Company pursuant to this Section). For purposes of this Section 6(f), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (i) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request (which may be via email) of a Holder, the Company shall within one Trading Day confirm orally and in writing to such Holder the number of shares of Common Stock then outstanding. The "**Primary Market Limitation**" shall be 19.99% of the number of shares of the Common Stock outstanding as of the Effective Date, immediately prior to the issuance of shares of Series AA-4 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series AA-4 Preferred Stock.

Section 7. Certain Adjustments.

(a) Adjustments to Conversion Price.

- (i) Stock Dividends and Stock Splits. If the Company, at any time while the Series AA-4 Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Common Stock on shares of Common Stock or any other Common Stock Equivalents (which, for avoidance of doubt, will not include any shares of Common Stock issued by the Company upon conversion of this Series AA-4 Preferred Stock or payment of a dividend on this Series AA-4 Preferred Stock); (B) subdivides outstanding shares of Common Stock into a larger number of shares; (C) combines (including by way of a reverse stock split) outstanding shares of Common Stock into a smaller number of shares; or (D) issues, in the event of a reclassification of shares of the Common Stock, any shares of capital stock of the Company, then the Conversion Price will be multiplied by a fraction of which the numerator will be the number of shares of Common Stock (excluding any treasury shares of the Company) outstanding immediately before such event and of which the denominator will be the number of shares of Common Stock, or in the event that clause (D) of this Section 7(a) will apply shares of reclassified capital stock, outstanding immediately after such event. Any adjustment made pursuant to this Section 7(a) will become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and will become effective immediately after the effective date in the case of a subdivision, combination or re-classification.
- (ii) Future Issuances. From and after the date thereof, if the Company shall issue or sell any Equity Securities (as defined below) at an effective price per share less than the then effective Conversion Price (such lower price, the "**Base Share Price**" and such issuances collectively, a "**Dilutive Issuance**"), as adjusted hereunder (if the holder of the Equity Securities so issued shall at any time, whether by operation of purchase price adjustments, reset provisions, floating conversion, exercise or exchange prices or otherwise, is entitled to receive shares of Common Stock at an effective price per share which is less than the then effective Conversion Price, such issuance shall be deemed to have occurred for less than the then effective Conversion Price on such date of the Dilutive Issuance), then, the Conversion Price shall be reduced to equal the Base Share Price subject to the Conversion Price Floor. Notwithstanding the foregoing, no adjustments shall be made, paid or issued under this Section 7(a)(ii) in respect of Exempt Issuances (as defined below). The Company shall notify the Holder in writing as promptly as reasonably possible following the issuance of any Equity Securities subject to this section, indicating therein the applicable issuance price, or of applicable reset price, exchange price, conversion price and other pricing terms (such notice the "**Dilutive Issuance Notice**"). For purposes of clarification, whether or not the Company provides a Dilutive Issuance Notice pursuant to this Section 7(a)(ii), upon the occurrence of any Dilutive Issuance while the Series AA-4 Preferred is outstanding, after the date of such Dilutive Issuance the Holder is entitled to the Base Share Price regardless of whether the Holder accurately refers to the Base Share Price in the Conversion Notice. Provided however, the Company shall not issue any shares of common stock below the Conversion Price Floor without the consent of the Holders of a majority of the outstanding Series AA-4 Preferred Stock voting as a separate class.

For purposes of this Section 7(a)(ii), the following definitions shall apply:

“**Common Stock Equivalents**” as defined in Section 1.

“**Equity Securities**” means (i) Common Stock and (ii) Common Stock Equivalents.

“**Exempt Issuance**” means (i) Equity Securities issued or issuable upon conversion or exercise of any currently outstanding securities or any Equity Securities issued in accordance with this Certificate (including the Conversion Shares and the Dividend Shares) or issued pursuant to any contractual rights granted to holders of the Series AA-4 Preferred Stock; (ii) Equity Securities granted to officers, directors and employees of, and consultants to, the Company pursuant to stock option or purchase plans or other compensatory agreements approved by the Board of Directors; (iii) Equity Securities issued in connection with any pro rata stock split, stock dividend or recapitalization by the Company; (iv) Equity Securities issued in a Strategic Investment; (v) Equity Securities issued pursuant to the acquisition of another corporation or entity by the Company by consolidation, merger, purchase of all or substantially all of the assets, or other reorganization in which the Company acquires, in a single transaction or series of related transactions, all or substantially all of the assets of such other corporation or entity or fifty percent (50%) or more of the voting power of such other corporation or entity or fifty percent (50%) or more of the equity ownership of such other corporation or entity; and (vi) securities issuable upon conversion or exercise of the securities set forth in paragraphs (i) - (v) above.

“**Strategic Investment**” any transaction or agreement with one or more persons, firms or entities designated as a “strategic partner” of the Company, as determined in good faith by the Board of Directors of the Company); provided, however, that each such “strategic partner” is itself, or has a subsidiary or affiliate that is, an operating company in a business synergistic with the business of the Company and provided further that the transaction is one in which the Company receives benefits in addition to the investment of funds. In no event shall a transaction in which the Company issues securities primarily for the purpose of raising capital or to one or more persons or entities whose primary business is investing in securities be deemed a Strategic Investment.

- (iii) VWAP-Based Adjustment. If, on the Second Anniversary, the Five-Day Adjustment VWAP is an amount that is less than the then effective Conversion Price, then the Conversion Price in effect immediately prior the Second Anniversary shall be adjusted so that the Conversion Price shall equal the Five-Day Adjustment VWAP, subject to the Conversion Price Floor.
- (iv) Provisions for Adjustments. Notwithstanding anything in this Section to the contrary: (i) in no event shall an adjustment be made under this clause if such adjustment would result in raising the then-effective Conversion Price; (ii) no adjustment under this Section 7(a) need be made to the Conversion Price unless such adjustment would require a decrease of at least 1.0% of the Conversion Price then in effect, with any lesser adjustment being carried forward and made at the time of and together with the next subsequent adjustment, if any, which, together with any adjustment or adjustments so carried forward, shall result in a decrease of at least 1.0% of such Conversion Price; (iii) no adjustment under this Section 7(a) shall be made if such adjustment will result in a Conversion Price that is less than the par value of the Common Stock; and (iv) no adjustment shall be made to the Conversion Price upon any Exempt Issuances. The Company will make all calculations under this Certificate of Designation in good faith, which calculations will, absent manifest error, control for purposes this Certificate of Designation.

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 7(a) above, if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Series AA-4 Preferred Stock (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(c) Pro Rata Distributions. During such time as this Series AA-4 Preferred Stock is outstanding, if the Company declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Series AA-4 Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Series AA-4 Preferred Stock (without regard to any limitations on conversion hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation or the Primary Market Limitation).

(d) Fundamental Transaction. If, at any time while the Series AA-4 Preferred Stock is outstanding, (A) the Company effects any merger or consolidation of the Company with or into another Person, (B) the Company effects any sale of all or substantially all of its assets in one transaction or a series of related transactions, or (C) the Company effects any reclassification of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then, upon any subsequent conversion of the Series AA-4 Preferred Stock, the Holders shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had been, immediately prior to such Fundamental Transaction, the holder of one share of Common Stock (the "**Alternate Consideration**"). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall adjust the Conversion Price in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holders shall be given the same choice as to the Alternate Consideration they receive upon any conversion of the Series AA-4 Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Company or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The terms of any agreement pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7(d) and insuring that the Series AA-4 Preferred Stock (or any such replacement security) will be substantially similar in form and substance to this Certificate of Designations and insuring that the Series AA-4 Preferred Stock will be convertible for a corresponding number of shares of capital stock of such successor entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Series AA-4 Preferred Stock (without regard to any limitations on the conversion of this Series AA-4 Preferred Stock) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Series AA-4 Preferred Stock immediately prior to the consummation of such Fundamental Transaction) and will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction.

(e) Calculations. All calculations under this Section 7 will be made to the nearest cent or the nearest 1/100th of a share, as the case may be.

(f) Notice to the Holders.

- (i) Adjustment to Conversion Price. Whenever the Conversion Price is adjusted pursuant to any provision of this Section 7, the Company shall promptly deliver to each Holder a notice setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment.
- (ii) Notice to Allow Conversion by Holder. If (A) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (B) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be filed at each office or agency maintained for the purpose of conversion of the Series AA-4 Preferred Stock, and shall cause to be delivered to each Holder pursuant to Section 9, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a written notice stating (x) the date on which a record is to be taken for the purpose of seeking such stockholder approval or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to convert such Holder's Series AA-4 Preferred Stock pursuant to Section 6(a) (subject to the Beneficial Ownership Limitation and the Primary Market Limitation) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 8. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided to the Holders, the Company or the Transfer Agent hereunder, including, without limitation, any Notice of Conversion or Company Conversion Notice, shall be in writing and delivered personally, by facsimile, by e-mail, or sent by a nationally recognized overnight courier service (i) if to the Holders, at the Holder's address set forth in the book and records of the Company or to another address of such Holder as may be specified by such Holder to the Company in a written notice delivered in accordance with this Section, or (ii) if to the Company, at 2912 Colorado Avenue, Suite 203, Santa Monica, CA 90404, or to another address as the Company may specify for such purposes by written notice to the Holders delivered in accordance with this Section. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided pursuant to this Certificate of Designations constitutes, or contains, material, non-public information regarding the Company or any Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K.

(b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designations shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay accrued dividends, as applicable, on the shares of Series AA-4 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series AA-4 Preferred Stock Certificate. If a Holder alleges that such Holder's Series AA-4 Preferred Stock certificate has been lost, stolen or destroyed, the Company will only be obligated to issue a replacement certificate if the Holder delivers to the transfer agent, or the Company, as applicable: (i) a lost certificate affidavit; (ii) an indemnity bond in a form acceptable to the Company's transfer agent, or if the Company acts as its own transfer agent, an agreement reasonably acceptable to the Company to indemnify the Company against any claim that may be made against the Company on account of the alleged loss, theft or destruction of such certificate; and (iii) any other documentation that the transfer agent or the Company, if the Company acts as its own transfer agent, may reasonably require.

(d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designations shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated by this Certificate of Designations (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). Each party hereto hereby irrevocably submits to the exclusive jurisdiction of the New York Courts 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 such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. 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 via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designations 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 other manner permitted by applicable law. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designations or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(e) Waiver. Any waiver by the Company or a Holder of a breach of any provision of this Certificate of Designations shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designations or a waiver by any other Holders. The failure of the Company or a Holder to insist upon strict adherence to any term of this Certificate of Designations on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Company or a Holder must be in writing.

(f) Severability. If any provision of this Certificate of Designations is invalid, illegal or unenforceable, the balance of this Certificate of Designations shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any dividend or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

(h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designations and shall not be deemed to limit or affect any of the provisions hereof.

(i) Status of Converted Series AA-4 Preferred Stock. If any shares of Series AA-4 Preferred Stock shall be converted or reacquired by the Company, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series AA-4 Convertible Preferred Stock.

[Signature page follows.]

IN WITNESS WHEREOF, this Certificate of Designations has been executed by a duly authorized officer of the Company as of this 5^h day of May, 2023.

/s/ Ann Hand

Name: Ann Hand
Title: Chief Executive Officer

ANNEX A

NOTICE OF CONVERSION

(TO BE EXECUTED BY THE REGISTERED HOLDER IN ORDER TO CONVERT SHARES OF SERIES AA-4 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series AA-4 Convertible Preferred Stock indicated below into shares of common stock, \$.001 par value per share (the "Common Stock"), of Super League Gaming, Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____

Number of shares of Series AA-4 Preferred Stock owned prior to Conversion: _____

Number of shares of Series AA-4 Preferred Stock to be Converted: _____

Stated Value of shares of Series AA-4 Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Series AA-4 Preferred Stock subsequent to Conversion: _____

Address for Delivery: _____

Or

DWAC Instructions:

Broker no: _____

Account no: _____

[Holder]

By: _____
Name:
Title:



Super League Acquires MELON, Bolstering Vertically-Integrated Strategy to Power Experiences Across the Immersive Web

Acquisition solidifies Super League's position as the premier end-to-end provider of branded immersive experiences across Web2 and Web3 ecosystems

Santa Monica, Calif. - (May 9, 2023)– Super League (Nasdaq: SLGG), a leading publisher of immersive experiences across the world's largest metaverse gaming platforms, announced today the acquisition of MELON, a groundbreaking development studio building innovative virtual worlds in partnership with powerful consumer brands across music, film, TV, sports, fashion and youth culture. **With this acquisition, Super League further strengthens its position as a one-stop solutions provider and strategic operating partner for marquee brands and businesses seeking to expand and activate communities throughout the gaming metaverse.**

“This accretive acquisition fits perfectly within Super League’s strategy of expanding our technology and capability backbone to further entrench the Company’s position as a leader in the emergence of the immersive web,” said Ann Hand, Chair and CEO of Super League. “M&A and consolidation are becoming predominant themes in our space, making our multiverse approach to virtual world publishing even more poignant in today’s market. The next generation internet is arriving, both within gaming and more broadly. It is more immersive, customizable, and sticky for consumers. Brands are coming to us initially to reach elusive young audiences and achieve campaign-oriented marketing objectives – but increasingly they stay with us as an enterprise solutions partner to help modernize the experience they provide for their digital community.”

MELON's focus on brand strategy and storytelling as core ingredients to driving successful business outcomes, combined with their development experience and innovative use of new technologies, have established the company as a consistent pioneer. Incorporating these capabilities, alongside Super League's industry-leading measurement and monetization software suite and proven player acquisition proficiency, creates a vertically-integrated powerhouse in the fastest growing segment of the video game industry. Through the acquisition of MELON, the company now has internal creation capabilities across multiple platforms such as Roblox and Minecraft, deep audience development expertise, an unparalleled network of creator partnerships whose experiences reach more than 100 million monthly active users ('MAUs'), and proprietary in-world monetization and digital-to-physical technology that delivers impactful results for brands and IP owners on a global scale.

MELON grew to prominence developing numerous high-profile experiences and creating one-of-a-kind experiences within Roblox, having worked with brands including the NFL, Chipotle, Mattel, Clarks, Dave & Buster's, and PacSun. Well-known for their achievements in the music industry, MELON was the first company to bring a music event to life on Roblox, and was the first independent studio to create an avatar-based music performance on the platform. The company has produced multiple award-winning virtual music events in partnership with major recording artists and record labels that have attracted millions of visitors - featuring such global stars as KSI, Ava Max, Tai Verdes, George Ezra and Zara Larsson.

"We're thrilled to combine forces with Super League and expand upon an ambitious creative and strategic vision shared by both companies," said Josh Neuman, co-founder and CEO of MELON. "There is no one size fits all for brands and IP owners entering the space. With Super League and MELON operating as an integrated company, we can provide brands with the full spectrum of crawl, walk, run alternatives designed to achieve targeted business objectives. We now have best-in-class execution capabilities at all levels under one roof, with the infrastructure to scale far beyond what we thought was possible."

Collectively, Super League and MELON have helped usher more than 100 brands and consumer-facing businesses into Roblox, Minecraft, and Fortnite, the three most significant metaverse gaming platforms focused on empowering gaming creators. Activations include an unparalleled range of programs, including branded worlds, integrations into existing popular experiences, custom limited-time-engagements such as concerts, tentpole cultural events, influencer play-throughs, content broadcasts, avatar item collections, and media campaigns.

“Other than watching videos, kids, teenagers and young adults - the hardest to reach of audiences - spend more time on their digital devices within games and immersive worlds than anywhere else. If you’re responsible for marketing a consumer facing brand, whether a retail product, sports organization, entertainment property, travel destination, or even a housing development, you can choose to engage young people where they are the most passionate, creative, connected, and inspired ... or not,” said Matt Edelman, President and Chief Commercial Officer of Super League. “We have just added the necessary expertise to deliver more inspired spaces. This deal will supercharge everything we do and are determined to accomplish.”

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About Super League

Super League (Nasdaq: SLGG) is a leading strategically-integrated publisher and creator of games and experiences across the world’s largest immersive digital platforms. From metaverse gaming powerhouses such as Roblox, Minecraft and Fortnite, to the most popular Web3 environments such as Sandbox and Decentraland, to bespoke worlds built using the most advanced 3D creation tools, Super League’s innovative solutions provide incomparable access to massive audiences who gather in immersive digital spaces to socialize, play, explore, collaborate, shop, learn and create. As a true end-to-end activation partner for dozens of global brands, Super League offers a complete range of development, distribution, monetization and optimization capabilities designed to engage users through dynamic, energized programs. As an originator of new experiences fueled by a network of top developers, a comprehensive set of proprietary creator tools and a future-forward team of creative professionals, Super League accelerates IP and audience success within the fastest growing sector of the media industry. For more, go to superleague.com.

Forward-Looking Statements

Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995. Statements in this press release that are not strictly historical are “forward-looking” statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements involve substantial risks, uncertainties and assumptions, including statements related to the Company and Melon and our acquisition of Melon’s assets that could cause actual results to differ materially from those expressed or implied by such statements. Forward-looking statements in this communication include, among other things, statements about the potential benefits of our acquisition of Melon and its assets, our possible or assumed business strategies, potential growth opportunities, new products and potential market opportunities. Risks and uncertainties include, among other things, risks related to our ability to successfully integrate Melon’s operations; our ability to implement its plans, forecasts and other expectations with respect to Melon’s business; our ability to realize the anticipated benefits of the acquisition of Melon, including the possibility that the expected benefits from the acquisition will not be realized or will not be realized within the expected time period; disruption from the acquisition of Melon making it more difficult to maintain business and operational relationships; the outcome of any legal proceedings related to the transaction or otherwise; the negative effects of the announcement or the consummation of the acquisition of Melon on the market price of our common stock or on our operating results; significant transaction costs; unknown liabilities; attracting new customers and maintaining and expanding our existing customer base, our ability to scale and update our platform to respond to customers’ needs and rapid technological change, increased competition on our market and our ability to compete effectively, and expansion of our operations and increased adoption of our platform internationally. Additional risks and uncertainties that could affect our financial results are included in the section titled “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2022 and other filings that we make from time to time with the Securities and Exchange Commission (“SEC”) which, once filed, are available on the SEC’s website at www.sec.gov. In addition, any forward-looking statements contained in this communication are based on assumptions that we believe to be reasonable as of this date. Except as required by law, we assume no obligation to update these forward-looking statements, or to update the reasons if actual results differ materially from those anticipated in the forward-looking statements.

CONTACT

For Super League

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