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): December 17, 2023

Super League Enterprise, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**001-38819**	**47-1990734**
(State or other jurisdiction of incorporation)	*(Commission File Number)*	*(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	SLE	Nasdaq Capital Market

Item 1.01 Entry into a Material Definitive Agreement.

Financing and Security Agreement

Super League Enterprise, Inc. (the "*Company*"), and certain of its subsidiaries (collectively with the Company, the "*Borrowers*"), entered into a Financing and Security Agreement (the "*Agreement*") with SLR Digital Finance, LLC ("*Lender*"), effective December 17, 2023 (the "*Effective Date*"). Pursuant to the Agreement, Lender may, from time to time and in its sole discretion, make certain cash advances to the Company (each an "*Advance*", and collectively, "*Advances*"), against the face amounts of certain uncollected accounts receivable of the Borrowers on an account-by-account basis (each, a "*Financed Account*", and collectively, the "*Accounts*"), at a rate of 85% multiplied by the face value of such Account (the "*Advance Rate*"), less any reserved funds and any other amounts due to Lender from Borrowers, up to a maximum aggregate Advance amount of $4,000,000 (the "*Maximum Amount*")(the Advances on the Accounts is hereinafter, the "*Facility*"). Upon receipt of any Advance, Borrowers will have assigned all of its rights in such receivables and all proceeds thereof. The proceeds received from the Facility will be used to fund general working capital needs.

The Agreement is effective for 24 months from the Effective Date (the "*Term*"), automatically extends for successive Terms (each, a "*Renewal Term*"), and the Borrowers' are obligated to pay the Lender an early termination fee in the event the Factoring Agreements are terminated under certain circumstances prior to the end of any Term or Renewal Term, as more specifically set forth in the Agreement.

In connection with the Facility, the Company agreed to, among other things, (i) pay a finance fee equal to 2% of the Maximum Amount, payable in 24 equal monthly installments on the last day of each month of the Term until paid in full, (ii) pay a servicing fee equal to 0.30% multiplied by the actual average daily amount of Advances outstanding at the time of determination (the "*Outstanding Amount*") for the applicable month, on the last day of each calendar month during the Term (or so long as any obligations arising under the Agreement are outstanding); (iii) be charged a monthly financing fee (the "*Financing Fee*"), due upon receipt of full payment of a Financed Account by Lender, equal to 1/12 of (a) the prime rate plus 2% (the "*Facility Rate*"), multiplied by (b) the amount of the Outstanding Amount; and (iv) utilize the facility such that the monthly average aggregate Advances outstanding is at $400,000 (the "*Minimum Utilization*"). In the event that Borrower's monthly utilization is less than the applicable Minimum Utilization for any month, the Financing Fee for such month shall be calculated as if the applicable Minimum Utilization has been satisfied.

Furthermore, the Agreement imposes various restrictions on the activities of the Borrowers, including a prohibition on fundamental changes to the Company or its subsidiaries (including certain consolidations, mergers and sales and transfers of assets, and limitations on the ability of the Borrowers to grant liens upon their property or assets). The Agreement includes standard Events of Default (as defined in the Agreement), and provide that, upon the occurrence of certain events of default, Lender may, among other things, immediately collect any obligation owing to Lender under the Agreement, cease advancing money to the Borrowers, take possession of any collateral, and/or charge interest at a rate equal to the lesser of (i) 6% above the Facility Rate, and (ii) the highest default rate permitted by applicable law.

As security for the full and prompt payment and performance of any obligations arising under the Agreement, the Borrowers granted to Lender a continuing first priority security interest in all the assets of the Borrowers. The Agreement also provides for customary provisions, including representations, warranties and covenants, indemnification, waiver of jury trial, arbitration, and the exercise of remedies upon a breach or default.

This summary of the Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Agreement, a copy of which is attached hereto as Exhibit 10.1.

Subscription Agreements

On December 22, 2023, 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 2,978 shares of newly designated Series AAA-2 Convertible Preferred Stock, par value $0.001 per share (the "*Series AAA Preferred*"), at a purchase price of $1,000 per share, for aggregate gross proceeds to the Company of approximately $2,978,000 (the "*Offering*").

In connection with the Offering, on December 22, 2023 (the "*Filing Date*"), the Company filed a Certificate of Designation of Preferences, Rights and Limitations of the Series AAA-2 Preferred Stock (the "*Series AAA Certificate of Designation*") with the State of Delaware.

Each share of Series AAA Preferred is convertible at the option of the holder, subject to certain beneficial ownership limitations and primary market limitations as set forth in the Series AAA 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 AAA 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 $1.71 for the Series AAA Preferred, subject to adjustment in the event of stock splits, stock dividends, certain fundamental transactions and future issuances of equity securities as described below). In addition, subject to beneficial ownership and primary market limitations, 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 AAA Preferred into the Company's Common Stock if the volume-weighted average price of such 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 AAA Preferred into the Company's Common Stock if the VWAP equals at least 300% of the Conversion Price.

The Series AAA 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 AAA Preferred shall vote as a separate class with respect to (a) amending, altering, or repealing any provision of the Series AAA Certificates of Designation in a manner that adversely affects the powers, preferences or rights of the Series AAA Preferred, (b) increasing the number of authorized shares of Series AAA Preferred, (c) authorizing or issuing an additional class or series of capital stock that ranks senior to or pari passu with the Series AAA 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 certain loans not to exceed $5,000,000 and accounts payable in the ordinary course of business, or (e) entering into any agreement with respect to the foregoing. In addition, no holder of Series AAA 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 AAA 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 AAA Preferred (together with any Parity Securities (as defined in the Series AAA 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 AAA 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 AAA Preferred then held by such holder on each of the 12- and 24-month anniversaries of the Filing Date. In addition, subject to the beneficial ownership and primary market limitations, holders of Series AAA 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/or 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/or 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 approval by a majority of the voting securities of the Company (the "*Stockholder Approval*"), pursuant to the Subscription Agreements, purchasers shall have the right to purchase shares of a newly designated series of Preferred Stock of the Company containing comparable terms (except for adjustments to the Conversion Price based on future equity issuances) as the Series AAA Preferred (the " *Additional Investment Right*") from the Securities and Exchange Commission declares the registration statement to be filed with the SEC pursuant to the Registration Rights Agreement (as defined below) effective, to the date that is 18 months thereafter for 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 of the Series AAA Preferred in effect on the Filing Date (i.e., the original conversion price). No further additional investment rights shall be granted to investors that exercise the Additional Investment Rights.

Further subject to the effectiveness of the Stockholder Approval, for twenty-four (24) months after the Filing Date, and subject to certain carveouts as described in the Series AAA Certificates of Designations, if the Company conducts an offering at a price per share less than the then effective conversion price (the " *Future Offering Price*") consisting of common stock, convertible or derivative instruments, then in such event the conversion price of the Series AAA Preferred shall be adjusted to the Future Offering Price, but not less than the Conversion Price Floor (as defined in the Series AAA Certificate of Designations).

Exchange Agreements

Also on December 22, 2023, the Company entered into certain Series A Exchange Agreements (the "*Series A Agreement*") and Series AA Exchange Agreements (the "*Series AA Agreement*", and collectively with the Series A Agreement, the " *Exchange Agreements*"), with certain holders (the "*Holders*") of the Company's Series A Convertible Preferred Stock, par value $0.001 per share ("*Series A Preferred*"), and Series AA Convertible Preferred Stock, par value $0.001 per share ("*Series AA Preferred*"), pursuant to which the Holders exchanged an aggregate of 2,356 shares of Series A Preferred and/or Series AA Preferred, for an aggregate of 2,356 shares of Series AAA Preferred (the " *Exchange*"). Additional Investment Rights shall also be granted with respect to shares of Series AAA Preferred issued in the Exchange. The Exchange closed concurrently with the closing of the Subscription Agreements.

The Subscription Agreements and Exchange Agreements (collectively, the "*Transaction Documents*") contain representations and warranties that the parties made to, and solely for the benefit of, the other signatories to the Transaction Documents in the context of the terms and conditions thereof and in the context of the specific relationship between the parties to the Transaction Documents. The provisions of such Transaction Documents, 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 Transaction Documents. Rather, investors and the public should refer to other disclosures contained in the Company's filings with the U.S. Securities and Exchange Commission with respect to obtaining such factual information.

The Company and the investors in the Offering and the Exchange also executed a registration rights agreement (the "*Registration Rights Agreement*"), pursuant to which the Company agreed to use its best efforts to file a registration statement covering the resale of the shares of Common Stock issuable upon conversion of the Series AAA Preferred within 45 days, but in no event later than 60 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 and/or exchanged the shares of Series AAA Preferred pursuant to a Placement Agency Agreement (the "*Placement Agency Agreement*") with Aegis Capital Corporation, a registered broker dealer, which acted as the Company's exclusive placement agent (the "*Placement Agent*") for the Offering and the Exchange. Pursuant to the terms of the Placement Agency Agreement, in connection with the December 22, 2023 closing of the Offering and the Exchange, the Company paid the Placement Agent an aggregate cash fee of $297,800, non-accountable expense allowance of $59,560 and will issue to the Placement Agent or its designees warrants (the "*Placement Agent Warrants*") to purchase 252,520 shares of Common Stock at an exercise price of $1.71 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 period of six (6) months 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. In addition, with respect to shares of Series AAA Preferred Stock issued in the Exchange, the Placement Agent exchanged previously issued placement agent warrants to purchase 32,939 shares of Common Stock of the Company that were issued in connection with the Series A and Series AA Preferred Stock financings of the Company, at exercise prices ranging from $7.60 to $13.41 per share, for new Placement Agent Warrants to purchase a total of 199,778 shares of Common Stock at an exercise price of $1.71 per share.

The securities issued in the Offering and Exchange 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 (including the Holders) are accredited investors, the investors are purchasing and/or exchanging the securities, as applicable, 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 forgoing descriptions of the Series AAA Certificate of Designation and Placement Agency Agreement are qualified in their entirety by reference to the full text of each document, copies of which are filed as Exhibit 3.1 and Exhibit 10.2, respectively, to this Current Report on Form 8-K. The foregoing description of the Form of Subscription Agreement, Form of Registration Rights Agreement, Form of Series A Exchange Agreement, Form of Series AA Exchange 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, Exhibit 10.3, Exhibit 10.4, and Exhibit 10.5, respectively, to the Company's Current Report on Form 8-K, filed with the SEC on December 6, 2023.

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

The response to this item is included in Item 1.01, Entry into a Material Definitive Agreement, under the heading "Financing and Security Agreement," and is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The response to this item is included in Item 1.01, Entry into a Material Definitive Agreement, under the headings "Subscription Agreements" and "Exchange Agreements," and is incorporated into this Item 3.02.

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 December 22, 2023, the Company filed the Series AAA Certificate of Designation (as defined above), designating 5,334 shares of Series AAA Preferred (as defined above) in connection with the Offering (as defined above).

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits Index

Exhibit No.	Description
3.1	Certificate of Designation of Preferences, Rights and Limitations of the Series AAA-2 Preferred Stock
10.1	Financing and Security Agreement, effective December 17, 2023, by and among Super League Enterprise, Inc., Mobcrush Streaming, Inc., InPVP, LLC and SLR Digital Finance, LLC
10.2	Placement Agency Agreement, dated November 6, 2023, between Super League Enterprise, Inc., and Aegis Capital Corporation
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

Super League Enterprise, Inc.

Date: December 22, 2023

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

Exhibit 3.1

CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES AAA-2 PREFERRED STOCK
OF
SUPER LEAGUE ENTERPRISE, INC.

It is hereby certified that:

1. The name of the Company (hereinafter called the "**Company**") is Super League Enterprise, 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 Five Thousand Five Hundred Ninety Seven (9,966,197) 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 AAA-2 issue of Preferred Stock:

RESOLVED, that Five Thousand Three Hundred Thirty Four (5,334) of the Ten Million (10,000,000) authorized shares of Preferred Stock of the Company shall be designated Series AAA-2 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 (1) 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).

"**Base Share Price**" shall have the meaning set forth in Section 7(a)(ii).

"**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 AAA-2 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 AAA Preferred Stock and Series AAA-2 Preferred Stock (including the Parity Securities), and any and all sub-series designated Series AAA-3 Preferred Stock and so on, as well as any and all series or subseries designated Series AAA-1 AIR Preferred 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 AAA-2 Preferred Stock (which for these purposes shall include the shares of Series AAA Preferred Stock, along with any and all sub-series designated Series AAA-3 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 $1.71, 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 Initial Conversion Price by (ii) thirty percent (30%).

"**Conversion Shares**" means the shares of Common Stock issuable upon conversion of the shares of Series AAA-2 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) (1) 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.

"**Dilutive Issuance Notice**" shall have the meaning set forth in Section 7(a)(ii).

"**Distribution**" shall have the meaning set forth in Section 7(c).

"**Dividend Shares**" shall have the meaning set forth in Section 3.

"**DWAC**" shall have the meaning set forth in Section 6(d)(i)

"**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.

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

"**Holder**" means an owner of shares of Series AAA-2 Preferred Stock.

"**Initial Conversion Price**" means $1.71, the Conversion Price on the Effective Date.

"**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 AAA-2 Preferred Stock (which for these purposes shall include the Series AAA Preferred Stock, Series A Preferred, Series AA Preferred, along with any and all sub-series designated as Series AAA-3 Preferred Stock and so on, as well as any and all series or subseries designated Series AAA-1 AIR Preferred 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).

"**Liquidation Amounts**" shall have the meaning set forth in Section 5(b).

"**Listing Rules**" means the Listing Rules of the Nasdaq Capital Market.

"**Majority Holders**" means the Holders of 51% or more of the then issued and outstanding shares of all Series AAA-2 Preferred Stock, which for these purposes shall include the shares of Series AAA Preferred Stock and Series AAA-2 Preferred Stock, along with any and all sub-series designated Series AAA-3 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 AAA-2 Preferred Stock regardless of the number of transfers of any particular shares of Series AAA-2 Preferred Stock and regardless of the number of certificates which may be issued, if any, to evidence such Series AAA-2 Preferred Stock.

"**Parity Securities**" means any class or series of capital stock of the Company currently existing or hereinafter created that expressly ranks pari passu with the Series AAA-2 Preferred Stock (which for these purposes shall include the Series AAA Preferred Stock, along with, any and all sub-series designated as Series AAA-3 Preferred Stock and so on, as well as any series or sub-series designated Series AAA-1 AIR Preferred, 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 and Series AA Preferred.

"**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).

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

"**Senior Securities**" means any class or series of capital stock of the Company hereafter created which expressly ranks senior to the Series AAA-2 Preferred Stock (which for these purposes shall include the Series AAA Preferred Stock and any and all sub-series designated as Series AAA-3 Preferred Stock and so on, as well as any and all series or subseries designated Series AAA-1 AIR Preferred 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**" means, 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**" means, 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**" means, 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**" means, 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**" means, 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**" means, collectively, the Series A Preferred Stock, Series A-2 Preferred Stock, Series A-3 Preferred Stock, Series A-4 Preferred Stock and Series A-5 Preferred Stock.

"**Series AA Preferred Stock**" means, 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**" means, 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**" means, 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**" means, unless otherwise stated herein, One Thousand Twenty Six (1,026) shares of Series AA-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 May 5, 2023

"**Series AA-5 Preferred Stock**" means, unless otherwise stated herein, five hundred fifty (550) shares of Series AA-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 May 26, 2023.

"**Series AA Preferred**" means, collectively, the Series AA Preferred Stock, Series AA-2 Preferred Stock, Series AA-3 Preferred Stock, Series AA-4 Preferred Stock and Series AA-5 Preferred Stock, and any and all sub-series designated Series AA-6 Preferred Stock, Series AA-7 Preferred Stock and so on, that may be authorized following the date hereof.

"**Series AAA Preferred Stock**" means, unless otherwise stated herein, nine thousand four hundred (9,400) shares of Series AAA Preferred Stock, which were authorized pursuant to a Certificate of Designation of Preferences, Rights and Limitations which was originally filed with the Delaware Secretary of State on November 30, 2023.

"**Series AAA-2 Preferred Stock**" shall have the meaning set forth in Section 2.

"**Series AAA – 1 AIR Preferred**" means the preferred stock of the Company, regardless of the specific name used to designate such series of Preferred Stock, that will be issuable pursuant to the exercise of additional investment rights as set forth in Section 6 of those certain Subscription Agreements, dated as of the Effective Date, by and between the Company and the holders of the Series AAA-2 Preferred Stock.

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

"**Stated Value**" means $1,000.00 per share of Series AAA-2 Preferred Stock.

"**Standard Settlement Period**" shall have the meaning set forth in Section 6(d)(i).

"**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) adjustments to the Conversion Price pursuant to Section 7.1(a)(ii) hereto, and (ii) the issuance of additional Series AAA-1 AIR Preferred; it being understood that no shares of Series AAA Preferred Stock and no shares of Series AAA-2 Preferred Stock 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.

"**VWAP**" shall have the meaning set forth in Section 6(b).

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 AAA-2 Convertible Preferred Stock (the "**Series AAA-2 Preferred Stock**") and the number of shares so designated shall be five thousand three hundred thirty four (5,334). So long as any of the Series AAA-2 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 AAA-2 Preferred Stock shall not be redeemed for cash and under no circumstances shall the Company be required to net cash settle the Series AAA-2 Preferred Stock.

Section 3. Dividends. Holders of shares of Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock, (ii) increase the number of authorized shares of Series AAA-2 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 an account receivable factoring facility in an amount not to exceed Five Million and 00/100 Dollars ($5,000,000) and 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock includes the Series AAA Preferred Stock, Series AAA-2 Preferred Stock, and any and all sub-series designated Series AAA-3 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 AAA-2 Preferred Stock (including the Series AAA Preferred Stock, and any other sub-series designated Series AAA-3 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 AAA-2 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 AAA-2 Preferred Stock in this Section 5 shall include the Series A Preferred, Series AA Preferred, Series AAA Preferred, and all sub-series designated Series AAA-3 Preferred Stock and so on, as well as any and all series or subseries designated Series AAA-1 AIR Preferred 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 the Series A Preferred and the Series AA Preferred, and the Junior Securities consist solely of shares of Common Stock. That so being, upon any Liquidation, the holders of shares of Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock to be converted, the number of shares of Series AAA-2 Preferred Stock owned prior to such conversion, the number of shares of Series AAA-2 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 AAA-2 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 AAA-2 Preferred Stock, a Holder shall not be required to surrender any Certificated Series AAA-2 Preferred Stock to the Company unless all of the shares of Series AAA-2 Preferred Stock represented by any such certificate are so converted, in which case such Holder shall deliver the Certificated Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 (1) year anniversary of the Original Issue Date, the Company may, in its discretion (subject to the Beneficial Ownership Limitation set forth in Section 6(e) and the Primary Market Limitation set forth in Section 6(f)), convert (A) 50% of the outstanding shares of Series AAA-2 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 AAA-2 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**"), 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 AAA-2 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 (2) Trading Days of (x) the Mandatory Conversion Date, if the shares of Series AAA-2 Preferred Stock are held in book entry form, or (y) such Holder's surrender of Certificated Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock (whether pursuant to Section 6(a) or 6(b)) will be equal to the number of shares of Series AAA-2 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 AAA-2 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 AAA-2 Preferred Stock (1) a certificate or certificates, of like tenor, for the number of shares of Series AAA-2 Preferred Stock evidenced by any surrendered certificate or certificates less the number of shares of Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock equal to the number of shares of Series AAA-2 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 AAA-2 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 AAA-2 Preferred Stock as required pursuant to the terms hereof.

(v) Reservation of Shares Issuable Upon Conversion. Subject to receipt of the Stockholder Approval, 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 (1) 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 (1) 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 AAA-2 Preferred. The limitations contained in this paragraph shall apply to a successor holder of the Series AAA-2 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 AAA-2 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 AAA-2 Preferred Stock (or any other Parity Securities) or payment of a dividend on this Series AAA-2 Preferred Stock (or any other Parity Securities)); (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. So long as the Company receives the Stockholder Approval, from and after the date thereof and until the date that is twenty four (24) months from the Effective Date, 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 AAA-2 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.

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 AAA-2 Preferred Stock (which for purposes of this definition shall include any contractual rights granted to holders of all Parity Securities, inclusive of any Equity Securities issued upon the conversion thereof); (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 (1) 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 (1) or more persons or entities whose primary business is investing in securities be deemed a Strategic Investment.

(iii) 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 either the Conversion Price Floor, or 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock (without regard to any limitations on the conversion of this Series AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 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 AAA-2 Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

(c) Lost or Mutilated Series AAA-2 Preferred Stock Certificate. If a Holder alleges that such Holder's Series AAA-2 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 AAA-2 Preferred Stock. If any shares of Series AAA-2 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 AAA-2 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 22nd day of December, 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 AAA-2 PREFERRED STOCK)

The undersigned hereby elects to convert the number of shares of Series AAA-2 Convertible Preferred Stock indicated below into shares of common stock, $.001 par value per share (the "Common Stock"), of Super League Enterprise, 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 AAA-2 Preferred Stock owned prior to Conversion: _____

Number of shares of Series AAA-2 Preferred Stock to be Converted: _____

Stated Value of shares of Series AAA-2 Preferred Stock to be Converted: _____

Number of shares of Common Stock to be Issued: _____

Applicable Conversion Price: _____

Number of shares of Series AAA-2 Preferred Stock subsequent to Conversion: _____

Address for Delivery: _____

Or

DWAC Instructions:

Broker no: _____

Account no: _____

[Holder]

By: _____
Name:
Title:

SLR DIGITAL FINANCE

FINANCING AND SECURITY AGREEMENT

INTRODUCTION

This Financing and Security Agreement ("Agreement") is made and entered into on December 5, 2023 (the "Effective Date") by and between **SUPER LEAGUE ENTERPRISE, INC**., ('Super League"), **MOBCRUSH STREAMING INC**. ("Mobcrush"), and **INPVP, LLC** ("InPVP") (each a "Borrower" and collectively the "Borrower") and **SLR DIGITAL FINANCE LLC** ("Lender"). Lender may make, in accordance with the terms herein, Advances from time to time in its sole and absolute discretion, against the Face Amount of certain of Borrower's Accounts, provided that Borrower agrees to the provisions of this Agreement. Capitalized terms used herein are defined in Section 36 below.

(a) Maximum Line Amount: Four Million Dollars ($4,000,000)
(b) Advance Rate: Eighty-Five Percent (85%) of gross value of Invoices
(c) Minimum Invoice Size: One thousand dollars ($1,000)
(d) Financing Fee: A monthly rate equivalent to 1/12 of the Facility Rate multiplied by the daily Outstanding Amount; provided that, for the first 30 days after each Advance the Financing Fee due with respect to such Advance for such 30 day period or part thereof shall not be less than the product of 1/12 of the Facility Rate multiplied by the amount of such Advance.
(e) Facility Rate: The sum of: (x) the Prime Rate plus (y) 2% per annum.
(f) Facility Fee: In consideration of Lender's entering into this Agreement, Borrower shall pay to Lender a facility fee (the "Facility Fee") for the entire Term in the amount of 2% of the Maximum Line Amount then in effect as set forth in Section 5.2 which Facility Fee will be fully earned on the Effective Date for the entire Term and on the first date of any Renewal Term for the entire Renewal Term. As an accommodation to Borrower, the Facility Fee shall be due and payable in monthly installments (except as set forth in Section 5.2), commencing on the last day of the month of the Effective Date (and the last day of the month in which any Renewal Term commences) and on each subsequent one-month anniversary of such date until paid in full. Notwithstanding the foregoing, the unpaid balance of the Facility Fee shall be payable in full on the earlier of (a) the termination of this Agreement, (b) the last day of the then effective Term, and (c) at Lender's option, upon Lender's declaration of an Event of Default.
(g) Misdirected Payment Fee: Twenty percent (20%) multiplied by the amount of any applicable misdirected payment.
(h) Wire Fee: An amount equal to Thirty-Five Dollars ($35.00).
(i) Servicing Fee. An amount equal to 0.30% multiplied by the actual average daily Outstanding Amount for the applicable month.
(j) Minimum Utilization Amount: Borrower shall utilize the facility hereunder such that the monthly average aggregate Advances outstanding is at Four Hundred Thousand Dollars ($400,000) (the "Minimum Utilization"). In the event Borrower's monthly utilization is less than the applicable Minimum Utilization for any month, the Financing Fee for such month shall be calculated as if the applicable Minimum Utilization had been satisfied.
(k) Concentration Limit – 25%. In the event the percentage exceeds the foregoing limit, Lender may exercise its right not to finance more Accounts of said Account Debtor.
(l) Term – 24 Months.
(m) Termination: Subject to the payment of the Termination Fee described below, Borrower may terminate this Agreement at any time upon 60 days prior written notice to Lender whereupon this Agreement shall terminate upon repayment in full of the outstanding Obligations (inclusive of the Termination Fee). Upon Complete Termination, the Lender will release its security interest in the Collateral at the expense of the Borrower.
(n) Termination Fee: During the Initial Term, an amount equal to (1) 2.0% of the Maximum Line Amount with respect to any termination of this Agreement occurring on or prior to the first anniversary of the Effective Date, (2) 1.0% of the Maximum Line Amount with respect to any termination of this Agreement occurring after the first anniversary of the Effective Date but on or prior to the second anniversary of the Effective Date, (3) 1% of the Maximum Line Amount for any termination occurring during any Renewal Term, and (4) $0 with respect to any termination of this agreement occurring on the last day of the Initial Term or any Renewal Term so long as the notice of termination requirements have been met.
(o) Systems Access Fee: Borrower shall pay to Lender a fee in an amount equal to seven hundred fifty dollars ($750) per month in connection with the software program for collateral reporting.

SIGNATURES

By their signatures below, the parties represent they have read, understand and agree to be bound by the Financing and Security Agreement, including the Standard Terms and Conditions referenced herein.

BORROWER AND LENDER have executed this Agreement through their authorized officers as of the date set forth above.

"BORROWER"
SUPER LEAGUE ENTERPRISE, INC.

/s/ Clayton Haynes
Name: Clayton Haynes
Title: CFO

MOBCRUSH STREAMING INC.

/s/ Clayton Haynes
Name: Clayton Haynes
Title: CFO

INPVP, LLC

/s/ Clayton Haynes
Name: Clayton Haynes
Title CFO

Contact Information:
Super League Enterprise, Inc.
Mobcrush Streaming Inc.
InPVP, LLC
2912 Colorado Avenue, Suite 203
Santa Monica, California 90404
Ph: (802) 294-2754
e-mail: clayton.haynes@superleague.com

Banking Information:
Bank: Wells Fargo
Address: 420 Montgomery St, San Francisco, CA 94104
ABA or Swift #: 121000248
Account #: 3360458826

"LENDER"
SLR DIGITAL FINANCE LLC

/s/ Kaitlyn Dorrlacombe
Name: Kaitlyn Dorrlacombe
Title: SVP, Underwriting

Contact Information:
SLR DIGITAL FINANCE LLC
15260 Ventura Blvd, Ste 700
Sherman Oaks, CA 91403
Ph: (310) 651-9201
e-mail: media-legal@slrbc.digital

SLR DIGITAL FINANCE

FINANCING AND SECURITY AGREEMENT
STANDARD TERMS AND CONDITIONS

1. **Financing; Billing.**

1.1. **Financing**

1.1.1. Borrower hereby assigns all of its Accounts upon their creation to Lender, whether now existing or hereafter arising, and shall submit all Invoices evidencing its Accounts electronically to Lender for financing in accordance with the terms and provisions of this Agreement.

1.1.2. Each Account submitted by Borrower for an Advance shall be accompanied by such additional documentation supporting and evidencing the Account as required by Lender.

1.1.3. Lender may, in its sole discretion, make Advances from time to time up to the sum of (a) the Advance Rate multiplied by the amount of Accounts deemed eligible by Lender in its sole discretion for borrowing purposes and that meet the representations in Section 14.6 minus (b) the Required Reserve Amount and any amounts due to Lender from Borrower, including, without limitation, any amounts due under Sections 2.1 and 3.1 hereof.

1.1.4 Lender may decline to make an Advance with respect to (a) any Account to the extent that the amount of such Account, when added to the other Accounts arising from the same Account Debtor exceeds the Concentration Limit of the unpaid amount of the Outstanding Amount or (b) any Account it deems to be ineligible for any other reason, in its sole discretion.

1.1.5 Unless otherwise agreed to by Lender, the Outstanding Amount shall not exceed the lesser of (a) the Maximum Line Amount and (b) the Advance Rate multiplied by the amount of Accounts deemed eligible for Advances.

1.1.6. Accounts submitted to Lender for financing must exceed Minimum Invoice Size as stated in the *General Rates and Fees*, except as otherwise agreed by both parties in writing.

1.1.7. To the extent Lender has elected to make an Advance in its sole discretion with respect to any Account, Lender shall make such Advance available to Borrower within three (3) business days of the day such Account is submitted.

1.1.8. All Advances made hereunder are at the absolute sole discretion of the Lender.

1.2. **Cash Management.** Borrower will deliver a Notice of Assignment (in the form provided by Lender to Borrower) to all Account Debtors advising them of the assignment of the Accounts and instructing them to make payments directly and only to Lender and before sending any Invoice to an Account Debtor, shall mark same with the payment instructions set forth in such Notice of New Remittance Instructions. If Borrower receives proceeds of Collateral, it shall hold such proceeds in trust for Lender in the form received and remit such proceeds to Lender immediately (but not longer than two (2) business days after receipt). Any proceeds not turned over in accordance herewith may be subject to a fee equal to twenty percent (20%) of the amount of such proceeds, which fee may be charged to the Borrower's account.

2. **Reserve Account.**

2.1. Borrower shall pay to Lender on demand the amount of any Reserve Shortfall.

2.2. Upon request of the Borrower, Lender shall pay to Borrower any amount by which the Reserve Account exceeds the Required Reserve Amount, unless the reserve is necessary to cover other Obligations of the Borrower, as determined by Lender in its sole discretion.

2.3. Lender may charge the Reserve Account with any Obligation.

2.4. Lender may pay any amounts due Borrower hereunder by a credit to the Reserve Account.

2.5. Lender may retain the Reserve Account until Complete Termination.

3. **Exposed Payments.**

3.1. Upon termination of this Agreement Borrower shall pay to Lender (or Lender may retain), to hold in a non-segregated non-interest-bearing account, the amount of all Exposed Payments plus the estimated cost of any litigation or defense of litigation with respect to such Exposed Payments (the "Preference Reserve").

3.2. Lender may charge the Preference Reserve with the amount of any Exposed Payments that Lender pays to the bankruptcy estate, receivership estate, assignee for benefit of creditors, creditor body or representative of any of the foregoing of the Account Debtor that made the Exposed Payment or on whose behalf such Exposed Payment was made, on account of a claim asserted under Sections 547, 548, 549 or 550 of the Bankruptcy Code or any equivalent type state or federal law, rule or regulation.

3.3. Lender shall refund to Borrower from time to time that balance of the Preference Reserve for which a claim under Sections 547, 548, 549 or 550 of the Bankruptcy Code or any equivalent type state or federal law, rule or regulation can no longer be asserted against the Exposed Payments due to the passage of the statute of limitations, settlement with the bankruptcy estate, receivership estate, assignee for benefit of creditors, creditor body or representative of any of the foregoing. The provisions of Sections 3.2 and 3.3 shall survive Complete Termination of the is Agreement.

4 . **Authorization for Financing.** Subject to the terms and conditions of this Agreement, Lender is authorized to finance Accounts upon instructions received via Lender's online funding portal from anyone purporting to be an officer, employee or representative of Borrower, including from any person previously approved by Borrower to provide instructions via Lender's online funding portal.

5. **Fees and Expenses.** Borrower shall pay to Lender:

5.1. **Financing Fee.** The Financing Fee shall be due on the date on which a Financed Account is Closed. Financing Fees and interest hereunder are computed on the basis of actual days elapsed over a 360-day year. Upon and during the continuance of any Event of Default, Lender may charge interest at the Default Rate.

5.2. **Facility Fee.** (a) The Facility Fee, which shall be two percent (2.0%) of the Maximum Line Amount and fully earned by Lender on the Effective Date, is payable in 24 equal monthly installments and charged to Borrower's account on the last day of each month until paid in full. The Facility Fee is non-refundable and not subject to rebate or pro-ration for any reason.

(b) For any Renewal Term, Borrower shall pay to Lender a Facility Fee equal to two percent (2.0%) of the Maximum Line Amount. One twenty-fourth (1/24) of such Facility Fee shall be paid on the last day of the month during which a Renewal Term commences, and the remaining amount during the Renewal Term shall be paid in installments of like amount on the last day of each month thereafter until paid in full.

The Facility Fee for the Initial Term and any Renewal Term is deemed to be fully earned upon the execution of this Agreement or the date of commencement of any Renewal Term. The unpaid balance of the Facility Fee for the entire Initial or Renewal Term based on then effective Maximum Line Amount shall be payable in full i) on the termination of this Agreement by Borrower other than on the last day of any Initial or Renewal Term, and ii) and at Lender's option, upon Lender's declaration of an Event of Default. If Borrower terminates this Agreement on the last day of the Initial or Renewal Term or Lender terminates this Agreement when no Event of Default has occurred, such Facility Fee shall be based on the lesser of the Maximum Line Amount or the then effective Benchmark Amount at termination.

5.3. **Servicing Fee**. In consideration of Lender's services for each calendar month, Borrower shall pay to Lender the Servicing Fee on the last day of each calendar month during the Term, including each Renewal Term, or so long as the Obligations are outstanding.

5.4. **Minimum Utilization Fee**. If the average daily Outstanding Amount during any calendar month is less than the Minimum Utilization Amount, Borrower shall pay to Lender the Minimum Utilization Fee equal to the Facility Rate multiplied by the amount by which the Minimum Utilization Amount exceeds such average daily Outstanding Amount. Such fee shall be charged to the Borrower's account on the last day of each month.

5.5. **Misdirected Payment Fee**. In the event an Account Debtor (a) fails to pay all Advances directly to Lender, and (b) does not notify Lender and forward the full amount to Lender within four (4) business days of receipt of such misdirected payment, Borrower shall pay to Lender the Misdirected Payment Fee.

5.6. **Wire Fees**. Lender shall charge Borrower's account with the Wire Fee for each outgoing wire transfer to or on behalf of the Borrower.

5.6. **Maximum Compensation**. In no event shall interest exceed the maximum rate permitted by law and if any provision of this Agreement relating to interest is in contravention of any applicable law, such provision shall be deemed amended to provide for interest at said maximum rate and any excess amount shall be applied to reduce the Outstanding Amount.

5.7. **Expenses.** Borrower shall reimburse Lender for the out-of-pocket expenses directly incurred by Lender in the administration of the Advances made pursuant hereto, in the protection, preservation or enforcement of its rights hereunder and any consultations with respect thereto, fees and expenses related to any lockbox, FactorSQL, NetLink fees, postage, legal fees set forth in Section 27 and field examinations, collateral analysis, and audits ("Audits"). Notwithstanding anything to the contrary contained herein, absent the existence of either an Event of Default or a request by Borrower to modify the terms of this Agreement, Borrower shall not be required to pay for more than 2 Audits during any contract year so long as there is no Event of Default and Borrower has not requested any change or modification to this Agreement or the financing provided hereunder.

6 . **Refunding of Accounts.** With respect to any of the following Financed Accounts, Lender may require that Borrower repay the then unpaid Face Amount thereof, together with any unpaid fees relating thereto on demand, or, at Lender's option, by Lender's charge to the Reserve Account:

6.1. Any Financed Account, the payment of which has been disputed by the Account Debtor obligated thereon, Lender being under no obligation to determine the bona fide nature of such dispute;

6.2. Any Financed Account regarding which Borrower has breached any representation or warranty as set forth in Section 14.

6.3. Any Financed Account owing from an Account Debtor which (a) in Lender's reasonable credit judgment has become insolvent or (b) has indicated an inability or unwillingness to pay the Financed Account when due;

6.4. All Financed Accounts if so demanded by Lender upon the occurrence of an Event of Default, or upon the termination date of this Agreement; and

6.5. Any Financed Account that remains unpaid beyond its Late Payment Date or that ceases to qualify as an Eligible Account.

7. **Security Interest.**

7.1. As security for the full and prompt payment and performance of the Obligations, Borrower grants to Lender a continuing first priority security interest in the Collateral.

8. **Clearance Days.** The receipt of any item of payment by Lender for the sole purpose of determining availability hereunder, subject to final payment of such item, shall be provisionally applied to reduce the Outstanding Amount on the date of receipt of such item of payment by Lender; provided however, the receipt of such item of payment by Lender for determining the calculation of interest on the Obligations and the calculation of the Financing Fees, shall not be deemed to have been paid to Lender until four (4) business days after the date of Lender's actual receipt of such item of payment.

9. **Authorization to Lender.**

9.1. **Authorization:** Borrower explicitly authorizes and grants to Lender the ability for Lender (acting through any of its employees, attorneys or agents) at any time, at its option but without obligation, with or without notice to Borrower, and at Borrower's sole expense, to do any or all of the following, in Borrower's name or otherwise until all of the Obligations have been paid in full:

9.1.1. Receive, take, endorse, assign, deliver, accept and deposit, in the name of Lender or Borrower, any and all proceeds of any Collateral securing the Obligations or the proceeds thereof;

9.1.2. Take or bring, in the name of Lender or Borrower, all steps, actions, suits or proceedings deemed by Lender necessary or desirable to effect collection of or other realization upon the Accounts;

9.1.3. Pay any sums necessary to discharge any lien or encumbrance which is senior to Lender's security interest in any assets of Borrower, which sums shall be included as Obligations hereunder;

9.1.4. Verify the amount and validity of any Account created by Borrower;

9.1.5. File, in form satisfactory to Lender, one or more financing statements, amendments thereto and continuations thereof under the UCC naming Borrower as debtor and Lender as secured party and indicating the Collateral herein specified, in all jurisdictions deemed necessary or desirable by Lender in order to perfect, preserve and protect its security interest in the Collateral;

9.1.6. Advise third parties that any notification to Borrower's Account Debtors will interfere with Lender's collection rights;

9.1.7. Accept, endorse and deposit on behalf of Borrower any checks tendered by an Account Debtor "in full payment" of its obligation to Borrower. Borrower shall not assert against Lender any claim arising therefrom, irrespective of whether such action by Lender effects an accord and satisfaction of Borrower's claims, under §3-311 of the UCC, or otherwise; and

9.1.8. After an Event of Default: (a) notify any Account Debtor obligated with respect to any Account, that the underlying Account has been assigned to Lender by Borrower and that payment thereof is to be made to the order of and directly and solely to Lender, (b) change the address for delivery of mail to Lender and to receive and open mail addressed to Borrower; (c) with respect to any dispute or claim that Lender determines could result in a reduction of the payment of an Account, compromise, adjust or otherwise dispose of such dispute or claim and (d) initiate electronic debit or credit entries through the ACH system to any deposit account maintained by Borrower and Borrower will be responsible for such fees or charges for non-payment, as if Borrower had delivered a "NSF" check or made no payment to Lender; and

9.1.9 Notify any Payor obligated with respect to an Account that the underlying Account has been assigned, sold and transferred to Lender and is payable solely and directly to Lender.

9.2. **Non-Exclusive License**. Borrower grants Lender a non-exclusive license to use any data collected in connection with the administration of this Agreement or Lender's credit portfolio provided that no personally identifiable information is disclosed to any other person and such use is solely for Lender's business purposes,

9.3 **Related Costs.** Any and all sums paid and any and all costs, expenses, liabilities, obligations and legal costs and fees incurred by Lender with respect to the foregoing shall be added to and become part of the Obligations. In no event shall Lender's rights under the foregoing authorization or any of Lender's other rights under this Agreement be deemed to indicate that Lender is in control of the business, management of properties of Borrower.

10. **Publicity.**

10.1 Borrower hereby authorizes Lender to make appropriate announcements of the financial arrangement entered into by and between Borrower and Lender, including without limitation, announcements which are commonly known as tombstones, in such publications and to such selected parties as Lender shall deem appropriate. The content of such announcements shall be subject to Borrower's approval which shall not be unreasonably withheld or delayed.

11. **Electronic Transactions Authorization.** The Parties agree that all business between one another shall be conducted by electronic means and adopt the provisions of the California Uniform Electronic Transactions Act (UETA) as set forth in California Civil Code, Division 3, Part 2, Title 2.5, Sections 1633.1 – 1633.17, inclusive, and shall specifically include documents executed by DocuSign. Each document that is subject to or provided in furtherance of this Agreement, all documents provided in furtherance thereof, as amended, modified or supplemented from time to time that a party has sent to the other by electronic means or the Borrower has clicked to approve to adopt this Agreement or Borrower submits through the online reporting system shall be intended as and constitute an original and deemed to contain a valid signature for all purposes acknowledging and consenting to the terms of the agreement applicable thereto. In furtherance of the above, the Borrower hereby authorizes Lender to regard the Borrower's printed name or electronic approval for any document, agreement, assignment schedules or invoices as the equivalent of a manual signature by one of the Borrower's authorized officers or agents. The Borrower's failure to promptly deliver to Lender any schedule, report, statement, writing or other information ("Record") required by this Agreement or any document related hereto shall not affect, diminish, modify or otherwise limit Lender's security interests in the Collateral. Lender may rely upon, and assume the authenticity of, any such electronic approval, and any material applicable to such approval as the duly confirmed, authorized and approved signature of the Borrower by the person approving same, shall constitute an "authenticated" record for all purposes (including, without limitation, the Uniform Commercial Code) and shall satisfy the requirements of any applicable statute of frauds. Borrower is not required to agree to conduct business pursuant to the UETA and the Advances being granted in furtherance of this Agreement are not conditioned upon Borrower agreeing to conduct business in accordance with the UETA. Borrower may terminate this Electronic Transactions Authorization by providing Lender with not less than ten (10) days' written notice as provided in Section 35.1, below. Thereafter, Borrower shall incur and be responsible to pay Lender a "Manual Reporting Fee" for any Record when manually submitted by Borrower to Lender or for any statement or report delivered manually by Lender to Borrower. Borrower's rights and access to any online internet services that Lender makes available to Borrower shall be provisional during any period of time that Lender determines that extraordinary circumstances exist and during such period Lender may limit or terminate Borrower's access to online services.

12. **Covenants By Borrower.**

12.1. **Accounts.** After written notice by Lender to Borrower, and automatically, without notice after an Event of Default, Borrower shall not, without the prior written consent of Lender in each instance, (a) grant any extension of time for payment of any of its Accounts, (b) compromise or settle any of its Accounts for less than the full amount thereof, (c) release in whole or in part any Account Debtor, or (d) grant any credits, discounts, allowances, deductions, return authorizations or the like with respect to any of the Accounts.

12.2. **Audits.** Borrower shall provide Lender or its designee access, during reasonable business hours (provided that after the occurrence and during the continuance of an Event of Default, Lender shall be provided access at any time) to all premises where Collateral is located for the purposes of conducting Audits and inspecting (and removing, if after the occurrence of an Event of Default) any of the Collateral, including Borrower's books and records, and Borrower shall permit Lender or its designee to make copies of such books and records or extracts therefrom as Lender may request. Lender may use any of Borrower's personnel, equipment, including computer equipment, programs, printed output and computer readable media, supplies and premises for the collection of accounts and realization on other Collateral as Lender, in its sole discretion, deems appropriate. Borrower hereby irrevocably authorizes all accountants and third parties to disclose and deliver to Lender at Borrower's expense all financial information, books and records, work papers, management reports and other information in their possession relating to Borrower. Borrower shall provide Lender with passwords or other access rights necessary for Lender to view Borrower's bank accounts and any customer portals or other systems used by Borrower to transmit invoices to its customers.

12.3. **Taxes.** Borrower shall pay when due all payroll and other taxes, and shall provide proof thereof to Lender in such form as Lender shall reasonably require.

12.4. **Liens or Indebtedness.** Borrower shall not: (a) create, incur, assume or permit to exist, any lien upon or with respect to any of its assets or (b) incur any indebtedness for borrowed money other than as set forth on Schedule 12.4 attached hereto.

12.5. **Avoidance Claims**

12.5.1. Borrower shall indemnify Lender from any loss (including defense costs, expenses and legal fees) arising out of the assertion, defense, or judgment or otherwise of any Avoidance Claim, and shall pay to Lender on demand the amount thereof.

12.5.2. Borrower shall notify Lender within two business days after Borrower becomes aware of the assertion of an Avoidance Claim.

12.5.3. Section 12.5 shall survive termination of this Agreement.

12.6. **No ACH Debit Block**. Borrower shall at all times maintain each of its deposit accounts in a manner that allows Lender to utilize the ACH authorization set forth in Section 10 or otherwise herein. Borrower shall not use any ACH debit block or any other service or functionality that prevents Lender from initiating and completing electronic debit or credit entries through the ACH system to any deposit account maintained by Borrower.

12.7 **Disposal of Assets**. Borrower shall not convey, sell, lease, license, assign, transfer, or otherwise dispose any of its assets in a manner not in the ordinary-course-of-business.

12.8 **Corporate Changes.** Borrower shall not (a) change its name or state of incorporation or formation without giving Lender at least 30 days prior written notice, (b) enter into any merger, division, consolidation or other reorganization, or (c) establish or create any subsidiaries unless Lender consents thereto and such subsidiary is joined as a Borrower hereto.

12.9 **Location of Collateral.** Borrower will provide Lender with at least thirty (30) days prior written notice in the event Borrower moves the Collateral, or obtains, opens or maintains any new or additional place(s) for the conduct of Borrower's business or the location of any Collateral, or closes any existing place of business.

12.10 **Financial Reporting**. Borrower will deliver to Lender: (a) as soon as available, but in any event within 45 days after the end of each of Borrower's fiscal months, consolidated company-prepared financial statements in reasonable detail and prepared in accordance with U.S. generally accepted accounting principles ("GAAP") (other than with respect to footnote disclosure or year-end audit adjustments) covering Borrower's operations during such period, (b) as soon as available, but in any event no later than the date that is 30 days prior to the start of each of Borrower's fiscal years, copies of Borrower's projections, budget and forecasts, in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Lender, for the forthcoming fiscal year, on a month by month basis, (c) as soon as available, but in any event within 120 days after the end of each of Borrower's fiscal years, CPA audited financial statements in reasonable detail and prepared in accordance with U.S. generally accepted accounting principles, (d) Copies of all deferral and state tax returns within seven days of the date such returns were filed, and (e) upon the request of Lender, any other information reasonably requested relating to the financial condition of Borrower.

12.11 Deferred Revenue Report. With each request for an Advance made by Borrower hereunder, Borrower shall submit a report of deferred revenue by debtor that is current through the date of each Advance request.

13. **Account Disputes.** Borrower shall notify Lender promptly of and, if requested by Lender, will settle all disputes concerning any Financed Account, at Borrower's sole cost and expense. Lender may, but is not required to, attempt to settle, compromise, or litigate (collectively, "Resolve") the dispute upon such terms, as Lender in its sole discretion deem advisable, for Borrower's account and risk and at Borrower's sole expense. Upon the occurrence of an Event of Default, Lender may Resolve such issues with respect to any Account of Borrower.

14. **Representation and Warranties.** Borrower hereby makes the following representations and warranties all of which shall be deemed true at all times:

14.1. **Existence and Power.** If Borrower is a partnership, limited liability company, or corporation, Borrower is and will continue to be duly authorized, validly existing and in good standing under the laws of the jurisdiction of its organization until all of the Obligations have been paid in full. Borrower is and will continue to be qualified and licensed in all jurisdictions in which the nature of the business transacted by it, or the ownership or leasing of its property, make such qualification and licensing necessary, and Borrower has and will continue to have all requisite power and authority to carry on its business as it is now, or may hereafter be, conducted.

14.2. **Authority.** Borrower is, and will continue to be, duly empowered and authorized to enter into, and grant security interests in its property, pursuant to and perform its obligations under, this Agreement, and all other instruments and transactions contemplated hereby or relating hereto. The execution, delivery and performance by Borrower of this Agreement, and all other instruments and transactions contemplated hereby or relating hereto, have been duly and validly authorized, are enforceable against the Borrower in accordance with their terms, and do not and will not violate any law or any provision of, nor be grounds for acceleration under, any agreement, indenture, note or instrument which is binding upon Borrower, or any of its property, including without limitation, Borrower's Operating Agreement, Partnership Agreement, Articles of Incorporation, By-Laws and any Shareholder Agreements (as applicable).

14.3. **Name; Trade Names and Styles.** Except as provided in Schedule 14.3 below, Borrower's legal name is exactly as set forth above and Borrower has not in the past five (5) years changed its legal name or been known by any other name, been party to a merger, division, consolidation or other change in structure. Listed below in Schedule 14.3 is each prior true name of Borrower and each fictitious name, trade name and trade style by which Borrower has been, or is now known, or has previously transacted, or now transacts business, as aforementioned noted. Borrower has complied, and will hereafter comply, with all laws relating to the conduct of business under, the ownership of property in, and the renewal or continuation of the right to use, a corporate, fictitious or trade name or trade style.

14.4 **Place and Nature of Business.** Borrower does not engage in any Restricted Industry. Borrower's books and records including, but not limited to, the books and records relating to Borrower's Accounts, are and will be kept and maintained at Borrower's address set forth above unless and until Lender otherwise consents in writing. In addition to Borrower's address, Borrower has places of business and maintains Collateral located only at Borrower's address or such other location disclosed in writing to Lender.

14.5 **Title to Collateral; Liens.** Borrower is now, and will at all times hereafter be, the true, lawful and sole owner of all the Collateral, subject to the security interest granted to Lender. The Collateral now is and will hereafter remain, free and clear of any and all liens, charges, security interests, encumbrances and adverse claims other than Lender's security interest. Lender now has, and will hereafter continue to have, a fully perfected and enforceable first priority security interest in all of the Collateral, and Borrower will at all times defend Lender and the Collateral against all claims and demands of others.

14.6. **Financed Accounts.** Each and every Financed Account sold and assigned to Lender shall, on the date the assignment is made and thereafter, comply with all of the following representations and warranties: (a) each Financed Account represents an undisputed bona fide existing unconditional obligation of the Account Debtor created by the sale, delivery, and acceptance of goods or the rendition of services in the ordinary course of Borrower's business; (b) each Financed Account is owned by Borrower free and clear of any and all deductions, disputes, liens, security interests and encumbrances; (c) the Account Debtor has received and accepted the goods sold and services rendered which created the Financed Account and the invoice therefor and will pay the same without any dispute; (d) no Account Debtor on any Financed Account is a shareholder or partner owning more than ten percent (10%) of Borrower's equity interests, director, or agent of Borrower, or is a person or entity controlling, controlled by or under common control with Borrower, or is engaged in a Restricted Industry; (e) no Financed Account is owed by an Account Debtor to whom Borrower is or may become liable in connection with goods sold or services rendered by the Account Debtor to Borrower or any other transaction or dealing between the Account Debtor and Borrower; and (f) each Financed Account arises from a contractual agreement that is governed by the law of a state of the United States of America or such other jurisdiction as approved by Lender in writing. Immediately upon discovery by Borrower that any of the foregoing representations or warranties, are or have become untrue with respect to any Financed Account, Borrower shall immediately give written notice thereof to Lender.

14.7. **Solvency of Account Debtors.** Borrower has not received notice or otherwise learned of actual or imminent bankruptcy, insolvency, or material impairment of the financial condition of any applicable Account Debtor regarding Financed Accounts.

14.8 **Intellectual Property**. Except as disclosed on Schedule 14.8 attached hereto, Borrower does not have any registered patents, copyrights, trademarks, or material licenses to use trademarks, patents and copyrights of others.

15. **Indemnification.** Borrower agrees to indemnify Lender against and save Lender harmless from any and all manner of suits, claims, liabilities, demands and expenses (including reasonable legal fees and collection costs) resulting from or arising out of this Agreement, whether directly or indirectly, including the transactions or relationships contemplated hereby (including the enforcement of this Agreement), and any failure by Borrower to perform or observe its obligations under this Agreement. This Section 15 shall survive termination of this Agreement.

16. **Disclaimer of Liability.** In no event will Lender be liable to Borrower for any lost profits, lost savings or other consequential, incidental, punitive or special damages resulting from or arising out of or in connection with this Agreement, the transactions or relationships contemplated hereby or Lender's performance or failure to perform hereunder, even if Lender has been advised of the possibility of such damages.

17. **Default.**

17.1. **Events of Default.** The occurrence of any one of more of the following shall constitute an Event of Default hereunder: (a) Borrower fails to pay or perform any Obligation as and when due; (b) there shall be commenced by or against Borrower or any guarantor of the Obligations any voluntary or involuntary case under the United States Bankruptcy Code, or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its assets, or Borrower makes or sends notice of a bulk transfer; (c) Borrower or any guarantor of the Obligations shall become insolvent in that its debts are greater than the fair value of its assets, or is generally not paying its debts as they become due or is left with unreasonably small capital; (d) any lien, garnishment, attachment, execution or the like is issued against or attaches to the Borrower, the Financed Accounts, or the Collateral; (e) Borrower shall breach any covenant, agreement, warranty, or representation set forth herein; (f) Borrower delivers any document, financial statement, schedule or report to Lender which is false or incorrect in any material respect; (g) Lender, at any time, acting in good faith and in a commercially reasonable manner, deems itself insecure with respect to the prospect of repayment or performance of the Obligations; (h) Borrower defaults under any other agreement for indebtedness if the effect of such default is to enable the holder of such indebtedness to make demand for payment prior to the maturity thereof and such default continues beyond any applicable grace or cure period; (i) Borrower or any of its senior management is criminally indicted or convicted of a felony offense under any state or federal law; (j) A Change of Control occurs; (k) Lender fails to have a perfected first priority security interest in any of the Collateral; (l) Borrower suspends or ceases operation of all or a material portion of its business, (m) there shall be issued or filed against Borrower or any guarantor of the Obligations an order, writ or judgment adversely affecting the Borrower, such guarantor or the Collateral that is not vacated, stayed, bonded or satisfied within thirty (30) days after such issuance or filing; (n) any present or future guarantor of the Obligations revokes, terminates or fails to perform any of the terms of any guaranty, endorsement or other agreement of such party in favor of Lender or any affiliate of Lender or shall notify Lender of its intention to rescind, modify, terminate or revoke any guaranty of the Obligations, or any such guaranty shall cease to be in full force and effect for any reason whatever; or (o) there is a material adverse change in Borrowers or Guarantors business, prospects or financial condition.

17.2. **No Waiver by Lender.** LENDER'S FAILURE TO CHARGE OR ACCRUE INTEREST OR FEES AT ANY "DEFAULT" OR "PAST DUE" RATE SHALL NOT BE DEEMED A WAIVER BY LENDER OF ITS RIGHT TO DO SO RETROACTIVELY TO THE OCCURRENCE OF ANY EVENT OF DEFAULT.

The failure of Lender at any time or times hereafter to require Borrower strictly to comply with any of the provisions, warranties, terms or conditions of this Agreement or any other present or future instrument or agreement between Borrower and Lender shall not waive or diminish any right of Lender thereafter to demand and receive strict compliance therewith and with any other provision warranty, term and condition; and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto and whether of the same or of a different type. None of the provisions, warranties, terms or conditions of this Agreement or other instrument or agreement now or hereafter executed by Borrower and delivered to Lender shall be deemed to have been waived by any act or knowledge of Lender or its agents or employees, but only by a specific written waiver signed by an officer of Lender and delivered to Borrower.

17.3 **Waiver of Notice by Borrower.** Borrower waives any and all notices or demands which Borrower might be entitled to receive with respect to this Agreement, or any other agreement by virtue of any applicable law. Borrower hereby waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, Account, general intangible, document or guaranty at any time held by Lender on which Borrower is or may in any way be liable, and notice of any action taken by Lender unless expressly required by this Agreement. Borrower hereby ratifies and confirms whatever Lender may do pursuant to this Agreement and agrees that Lender shall not be liable for the safekeeping of the Collateral or any loss or damage thereto, or diminution in value thereof, from any cause whatsoever, any act or omission of any carrier, warehouseman, bailee, forwarding agent or other person, or any act of commission or any omission by Lender or its officers, employees, agents, or attorneys, or any of its or their errors of judgment or mistakes of fact or of law.

18. **Remedies.**

18.1 **Generally.** Upon the occurrence of any Event of Default, and at any time thereafter, Lender, at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower) may do any one or more of the following: (a) Cease advancing money or extending credit to or for the benefit of Borrower under this Agreement, and any other document or agreement; (b) Accelerate and declare all or any part of the Obligations to be immediately due, payable, and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation as well as charging the Default Rate on the Obligations above and in addition to any applicable rate hereunder; (c) Take possession of any or all of the Collateral wherever it may be found, and for that purpose Borrower hereby authorizes Lender without judicial process to enter onto any of the Borrower's premises without hindrance to search for, take possession of, keep, store, or remove any of the Collateral and remain on such premises or cause a custodian to remain thereon in exclusive control thereof without charge for so long as Lender deems necessary in order to complete the enforcement of its rights under this Agreement or any other agreement; provided, however, that should Lender seek to take possession of any or all of the Collateral by Court process or through a receiver, Borrower hereby irrevocable waives: (i) any bond and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession; (ii) any demand for possession prior to the commencement of any suit or action to recover possession thereof; and (iii) any requirement that Lender retain possession of and not dispose of any such Collateral until after trial or final judgment; (d) Require Borrower to assemble any or all of the Collateral and make it available to Lender at a place or places to be designated by Lender which is reasonably convenient to Lender and Borrower, and to remove the Collateral to such locations as Lender may deem advisable; (e) Place a receiver in exclusive control of Borrower's business and/or any or all of the Collateral, in order to assist Lender in enforcing its rights and remedies; (f) Sell, reclaim, lease or otherwise dispose of all or any portion of the Collateral in its condition at the time Lender obtains possession or after further manufacturing, processing or repair; at any one or more public and/or private sale(s) (including execution sales); in lots or in bulk; for cash, exchange for other property or on credit; and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale. Lender shall have the right to conduct such disposition on Borrower's premises without charge for such time or times as Lender deems fit, or on Lender's premises, or elsewhere and the Collateral need not be located at the place of disposition. Lender may directly or through any affiliated company purchase or lease any Collateral at any such public disposition and, if permissible under applicable law, at any private disposition. Any sale or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition at the time of sale; (g) Demand payment of, and collect any Accounts, Instruments, Chattel Paper, Supporting Obligations and General Intangibles comprising part or all of the Collateral; or (h) Demand and receive possession of any of Borrower's federal and state income tax returns and the books, records and accounts utilized in the preparation thereof or referring thereto. Any and all legal fees, expenses, costs, liabilities and obligations incurred by Lender with respect to the foregoing shall be added to and become part of the Obligations and shall be due on demand.

18.2 **Application of Proceeds.** The proceeds received by Lender from the disposition of or collection of any of the Collateral shall be applied to the Obligations in such manner as Lender shall determine in its sole discretion. If any deficiency shall arise, Borrower shall remain liable to Lender therefor. In the event that, as a result of the disposition of any of the Collateral, Lender directly or indirectly enters into a credit transaction with any third party, Lender shall have the option, exercisable at any time, in its sole discretion, of either reducing the Obligations by the principal amount of such credit transaction or deferring the reduction thereof until the actual receipt by Lender of cash therefor from such third party.

18.3 **Online Access.** Upon an Event of Default, all of Borrower's rights and access to any online internet services that Lender makes available to Borrower shall be provisional pending Borrower's curing of all such Events of Default. During such period of time, Lender may limit or terminate Borrower's access to online services. Borrower acknowledges that the information Lender makes available to Borrower through online internet access, both before and after an Event of Default, constitutes and satisfies any duty to respond to a request for accounting or request regarding a statement of account that is referenced in the Uniform Commercial Code as enacted in the State of California.

18.4 **Standards of Commercial Reasonableness.** After an Event of Default, the parties acknowledge that it shall be presumed commercially reasonable and Lender shall have no duty to undertake to collect any Account, including those in which Lender receives information from an Account Debtor that a dispute exists. Furthermore, in the event Lender undertakes to collect or enforce an obligation of an Account Debtor or any other person obligated on the Collateral and ascertains that the possibility of collection is outweighed by the likely costs and expenses that will be incurred, Lender may at any such time cease any further collection efforts and such action shall be considered commercially reasonable. Before Borrower may, under any circumstances, seek to hold Lender responsible for taking any commercially unreasonable action, Borrower shall first notify Lender in writing, of all of the reasons why Borrower believes Lender has acted in any commercially unreasonable manner and advise Lender of the action that Borrower believes Lender should take.

18.5 **Remedies Cumulative.** In addition to the rights and remedies set forth in this Agreement, Lender shall have all other rights and remedies accorded a secured party under the Uniform Commercial Code as enacted in California and under any and all other applicable laws and in any other instrument or agreement now or hereafter entered into between Lender and Borrower and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Lender from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay of Lender to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been fully paid and performed.

19. **Account Stated.** Lender shall regularly make available to Borrower electronically a statement setting forth the transactions arising hereunder. Each statement shall be considered correct and binding upon Borrower as an account stated, except to the extent that Lender receives, within sixty (60) days after making such statement available, written notice from Borrower of any specific exceptions by Borrower to that statement, and then it shall be binding against Borrower as to any items to which it has not objected.

20. **Amendment and Waiver.** Only a writing signed by all parties hereto may amend this Agreement. No failure or delay in exercising any right hereunder shall impair any such right that Lender may have, nor shall any waiver by Lender hereunder be deemed a waiver of any default or breach subsequently occurring. Lender's rights and remedies herein are cumulative and not exclusive of each other or of any rights or remedies that Lender would otherwise have.

21. **Termination; Effective Date.**

21.1. Subject to the Early Termination Fee, this Agreement will be effective on the date it is signed by Borrower and accepted by Lender ("Effective Date"), shall continue for the Term (such first Term being referred to as the "Initial Term"), and shall be automatically extended for successive Terms (each, a "Renewal Term") unless Borrower shall provide 60 days prior written notice to Lender of its intention to terminate at the end of any Initial Term or Renewal Term whereupon this Agreement shall terminate on the date set forth in said notice upon successful repayment of all outstanding Obligations.

21.2. Lender may terminate this Agreement and demand immediate payment of all outstanding Obligations at any time and for any reason.

22. **No Lien Termination without Release.** In recognition of the Lender's right to have its legal fees and other expenses incurred in connection with this Agreement secured by the Collateral, notwithstanding payment in full of all Obligations by Borrower, Lender shall not be required to record any terminations or satisfactions of any of Lender's liens on the Collateral unless and until Complete Termination has occurred. Borrower understands and agrees that this provision constitutes a waiver of its rights under §9-513 of the UCC.

23. **Conflict.** Unless otherwise expressly stated in any other agreement between Lender and Borrower, if a conflict exists between the provisions of this Agreement and the provisions of such other agreement with Lender, the provisions of this Agreement shall control.

24. **Severability.** In the event any one or more of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

25. **Enforcement.** This Agreement and all agreements relating to the subject matter hereof is the product of negotiation and preparation by and among each party and its respective attorneys and shall be construed accordingly.

26. **Relationship of Parties.** The relationship of the parties hereto shall be that of Borrower and Lender, and Lender shall not be a fiduciary of the Borrower, although Borrower may be a fiduciary of the Lender.

27. **Legal Fees.** Borrower agrees to reimburse Lender on demand for:

27.1. The actual amount of all costs and expenses, including legal fees (including costs of internal counsel), which Lender has incurred or may incur in;

27.1.1. Negotiating, preparing, or administering this Agreement and any documents prepared in connection herewith or in any way arising out of or in connection with this Agreement, and whether or not arising out of a dispute which does not involve Lender;

27.1.2. Protecting, preserving or enforcing any lien, security or other right granted by Borrower to Lender or arising under applicable law, whether or not suit is brought, including but not limited to the defense of any Avoidance Claims or the defense of Lender's lien priority;

27.1.3. The actual costs, including photocopying (which, if performed by Lender's employees, shall be at the rate of $.10/page), travel, and legal fees and expenses incurred in complying with any subpoena or other legal process in any way relating to Borrower. and

27.1.4. The actual amount of all costs and expenses, including legal fees, which Lender may incur in enforcing this Agreement and any documents prepared in connection herewith, or in connection with any federal or state insolvency proceeding commenced by or against Borrower, including but not limited to those (a) arising out the automatic stay, (b) seeking dismissal or conversion of the bankruptcy proceeding, (c) opposing confirmation of Borrower's plan thereunder, or (d) validating Lender's security interest or lien priority with respect to the Collateral.

27.2. This Section 27 shall survive termination of this Agreement.

28. **Entire Agreement.** No promises of any kind have been made by Lender or any third party to induce Borrower to execute this Agreement. No course of dealing, course of performance or trade usage, and no parole evidence of any nature, shall be used to supplement or modify any terms of this Agreement.

29. **Choice of Law.** This Agreement and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws of the Chosen State.

30. **Jury Trial Waiver.** EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), THE OBLIGATIONS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE PARTIES ACTIONS IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES EACH ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING. THE PARTIES EACH ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS.

IN THE EVENT THAT ANY PARTY HERETO ELECTS TO BRING ANY ACTION OR PROCEEDING IN THE STATE OF CALIFORNIA, RELATING TO THIS AGREEMENT OR ANY OF THE OBLIGATIONS, THE PARTIES AGREE THAT SUCH ACTION OR PROCEEDING SHALL BE TRIED SOLELY THROUGH A JUDICIAL REFEREE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES FURTHER AGREE TO THE APPOINTMENT OF JAMS AS THE REFEREE APPOINTMENT TO CONDUCT THE TRIAL AND SUCH RELATED PROCEEDINGS. THE PARTIES AGREE THAT THE FILING OF ANY PRE-TRIAL MOTION OR ANY PRE-TRIAL PROVISIONAL REMEDY SHALL NOT OPERATE AS A WAIVER OF EACH PARTY'S RIGHT TO TRIAL SOLELY THROUGH A JUDICIAL REFEREE. THE PARTIES ACKNOWLEDGE THAT THE JUDICIAL REFEREE WILL LIKELY CHARGE FEES AND COSTS OVER AND ABOVE THOSE NORMALLY CHARGED BY A COURT. THE PARTIES AGREE TO INITIALLY EVENLY SPLIT THE FEES AND COSTS OF SUCH REFEREE BETWEEN THE PARTIES, SUBJECT TO SUCH FURTHER RULINGS BY THE REFEREE.

31. **Venue; Jurisdiction.** Any suit, action or proceeding arising hereunder, or the interpretation, performance or breach hereof, shall, if Lender so elects, be instituted in any court sitting in the Chosen State, in the city in which Lender's chief executive office is located, or if none, any court sitting in the Chosen State (the "Acceptable Forums"). Borrower agrees that the Acceptable Forums are convenient to it, and submits to the jurisdiction of the Acceptable Forums and waives any and all objections to jurisdiction or venue. Should such proceeding be initiated in any other forum, Borrower waives any right to oppose any motion or application made by Lender to transfer such proceeding to an Acceptable Forum.

32. **Service of Process.** Borrower agrees that Lender may effect service of process upon Borrower by regular mail at the address set forth herein or at such other address as may be reflected in the records of Lender, or at the option of Lender by service upon Borrower's agent for the service of process.

33. **Assignment.** Lender may assign its rights and delegate its duties hereunder. Upon such assignment, Borrower shall be deemed to have attorned to such assignee and shall owe the same obligations to such assignee and shall accept performance hereunder by such assignee as if such assignee were Lender.

34. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Agreement electronically shall be effective as delivery of a manually executed counterpart of this Agreement, and any party delivering such an executed counterpart of the signature page to this Agreement electronically to any other party shall thereafter also promptly deliver a manually executed counterpart of this Agreement to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Agreement.

35. **Notice.**

35.1. All notices required to be given to any party other than Lender shall be deemed given upon the first to occur of (a) a deposit thereof in a receptacle under the control of the United States Postal Service, (b) transmittal by electronic means to a receiver under the control of such party, or (c) actual receipt by such party or an employee or agent of such party. All notices to Lender shall be deemed given upon actual receipt by a responsible officer of Lender.

35.2. For the purposes hereof, notices for each party hereunder shall be sent to the addresses set forth as Address for such party on the face page hereof, or to such other addresses as each such party may in writing hereafter indicate.

36. **Definitions and Index to Definitions.** The following terms used within this Agreement shall have the following meaning. All capitalized terms not defined within this Agreement shall have the meaning set forth in the Uniform Commercial Code:

(a) "Account Debtor" – any obligor on an Account.

(b) "Advance" – The funding of all or any portion of the Face Amount of Account prior to collection.

(c) "Advance Rate" – As stated in the *General Rates and Fees*.

(d) "Avoidance Claim" - Any claim that any lien or payment received by Lender is avoidable under the Bankruptcy Code, any other debtor relief statute, including fraudulent conveyance claims, or through receivership, assignment for the benefit of creditors or any equivalent type payment recovery laws, rules or regulations intended to benefit creditors.

(e) "Change of Control" – means the person or entity constituting the majority ultimate beneficial owner of the voting equity interests of Borrower (or having the ability to elect a majority of the board of directors of Borrower) as of the date hereof no longer constituting the majority ultimate beneficial owner of the voting equity interests of Borrower (or having the ability to elect a majority of the board of directors of Borrower).

(f) "Chosen State" - California.

(g) "Closed" - A Financed Account is closed upon receipt of full payment by Lender from an Account Debtor or from the Borrower (including its being charged to the Reserve Account).

(h) "Collateral"- all assets of Borrower, whether now existing or hereafter acquired and wherever located, including, without limitation, all Borrower's present and future Accounts, Chattel Paper (including Electronic Chattel Paper), Goods (including all returned or repossessed Goods, Inventory and Equipment), Equipment, Inventory, Commercial Tort Claims, Instruments, Deposit Accounts, Documents, Investment Property, and General Intangibles (including without limitation all tradenames, trademarks, tradestyles, licenses, payment intangibles, tax refunds and proceeds of insurance), licensing fees, royalties, Letter-of-Credit Rights, Letters of Credit, Supporting Obligations, all unpaid seller's rights (including, without limitation, Borrower's rights to stoppage in transit, replevin and reclamation), all leasehold improvements, and all products and cash and non-cash Proceeds of all the foregoing, together with all reserves and all moneys credited or payable to Borrower (whether credited or payable to Borrower pursuant to this Agreement or in a deposit account maintained with Lender, or otherwise), all rights and credit balances of Borrower under any factoring, financing, loan or credit agreements with Lender or otherwise, and, any of Borrowers property at any time in Lender's possession, and in all Books and Records.

(i) "Complete Termination" – Complete Termination occurs upon satisfaction of the following conditions: (1) Payment in full in cash of all Obligations of Borrower to Lender; (2) If Lender has issued or caused to be issued guarantees, promises, or letters of credit on behalf of Borrower, acknowledgement from any beneficiaries thereof that Lender or any other issuer has no outstanding direct or contingent liability therein; and (3) Borrower has executed and delivered to Lender a general release in the form required by Lender and complied with Section 21.1.

(j) "Concentration Limit" - As stated in the *General Rates and Fees*.
(k) "Default Rate" – the lesser of: (1) 6% above the Facility Rate and (2) the highest default rate permitted by applicable law.
(l) "Events of Default" - See Section 17.1.
(m) "Exposed Payments" – Payments received by Lender from or for the account of an Account Debtor that has become subject to a bankruptcy proceeding, to the extent such payments cleared the Account Debtor's deposit account within ninety (90) days of the commencement of said bankruptcy case.
(n) "Face Amount" - the amount invoiced on an Account at the time of the applicable Advance.
(o) "Facility Fee" – As stated in the *General Rates and Fees.*
(p) "Facility Rate" – As stated in the *General Rates and Fees*.
(q) "Financed Accounts" – Accounts for which a corresponding Advance has been made hereunder which have not been Closed.
(r) "Financing Fee" – As stated in the General Rates and Fees .
(s) "Intellectual Property" – all intellectual and similar property, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; domain names, all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.
(t) "Invoice" - The document that evidences or is intended to evidence an Account.
(u) "Late Payment Date" – One hundred twenty (120) days from the original invoice date.
(v) "Misdirected Payment Fee" – Unless otherwise stated in the *General Rates and Fees*, 20% of the amount of any payment (but in no event less than $1,000) on account of a Financed Account which has been received by Borrower and not delivered in kind to Lender within four (4) business days following the date of receipt by Borrower, or 30% of the amount of any such payment which has been received by Borrower as a result of any action taken by Borrower to cause such payment to be made to Borrower.
(w) "Obligations" - All present and future obligations owing by Borrower to Lender whether arising hereunder or otherwise, whether direct or indirect, absolute or contingent, due or to become due and whether arising before, during or after the commencement of the filing of any petition in bankruptcy by or against Borrower or the commencement of any other insolvency proceedings with respect to Borrower. Without limiting the generality hereof, Borrower acknowledges and agrees that the term "Obligations" shall include, all ledger debt of Borrower, which shall mean and include all indebtedness of Borrower now or hereafter owing to a third party, which Lender or any of Lender's affiliates has heretofore or hereafter purchased from such third party, acquires by way of assignment, or in which Lender or any of Lender's affiliates has heretofore or hereafter acquires a security interest, whether as a result of Lender financing the accounts receivable of such third party or otherwise. Borrower acknowledges that Lender will be relying upon this provision in financing the accounts receivable of such third parties (consisting of indebtedness and obligations now or hereafter due from Borrower to such third parties), as well as in permitting Account Debtors to incur other indebtedness due to Borrower, but nothing herein shall constitute a commitment of any kind by Lender to factor or finance the accounts receivable of any third party to the extent they represent amounts owing by Borrower to such third parties.
(x) "Outstanding Amount" – The aggregate amount of Advances outstanding at any time of determination.
(y) "Parties" - Borrower and Lender.
(z) "Prime Rate" means the greater of: (a) 7.5%, and (b) the highest rate published from time to time by the Wall Street Journal as the Prime Rate for such day, or, in the event the Wall Street Journal ceases to publish the Prime Rate, the base, reference or other rate then designated by Wells Fargo Bank for general commercial loan reference purposes, it being understood that such rate is a reference rate, not necessarily the lowest, established from time to time, which serves as the basis upon which effective interest rates are calculated for loans making reference thereto (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (b) shall be deemed to be zero). The effective interest rate applicable to undersigned's loans shall change on the date of each change in the Wall Street Journal Prime Rate.
(aa) "Renewal Term" – As set forth in Section 21.1
(bb) "Required Reserve Amount" - The Reserve Percentage multiplied by the unpaid balance of Financed Accounts.
(cc) "Reserve Account" - A bookkeeping account on the books of the Lender representing the portion of the Face Amount of the Financed Account which has not been paid by Lender to Borrower, maintained by Lender to ensure Borrower's performance with the provisions hereof.
(dd) "Reserve Percentage" - 100% less the Advance Rate. The Reserve Percentage may be increased or decreased at any time in Lender's sole discretion.
(ee) "Reserve Shortfall" - The amount by which the Reserve Account is less than the Required Reserve Amount.
(ff) "Restricted Industry" – any of the following industries: adult entertainment, firearm or ammunition sales or manufacturing, or gambling.
(gg) "Servicing Fee" As stated in the *General Rates and Fees.*
(hh) "Term" – As stated in the *General Rates and Fees.*
(ii) "Termination Fee" – As stated in the *General Rates and Fees*.
(jj) "UCC" – The Uniform Commercial Code as adopted in the Chosen State or, if applicable, the state in which the Borrower is deemed located under the UCC in the Chosen State.

[SIGNATURES AGREEING TO THE STANDARD TERMS AND CONDITIONS APPEAR ON THE FIRST PAGE]

SCHEDULE 12.4
PERMITTED INDEBTEDNESS FOR BORROWED MONEY

[Omitted]

SCHEDULE 14.3
FORMER NAMES AND TRADE NAMES

[OMITTED]

SCHEDULE 14.8
DISCLOSURE OF REGISTERED PATENTS, COPYRIGHTS, AND TRADEMARKS

[OMITTED]

Title	Country	Application Number	Filing Date	Patent Number	Issue Date	Owner
MULTI-PLAYER GAMING ON PUBLIC DISPLAYS	US	62/075,357	05-Nov-2014			Super League Gaming, Inc.
GAME SYSTEM	WO	PCT/US2015/029532	06-May-2015			
MULTI-USER GAME SYSTEM WITH TRIGGER-BASED GENERATION OF PROJECTION VIEW	US	15/179,868	10-Jun-2016	10,946,274	16-Mar-2021	Super League Gaming, Inc.
MULTI-USER GAME SYSTEM WITH CHARACTER-BASED GENERATION OF PROJECTION VIEW (TRACK 1)	US	15/179,878	10-Jun-2016	10,702,771	07-Jul-2020	Super League Gaming, Inc.
MULTI-USER GAME SYSTEM WITH CHARACTER-BASED GENERATION OF PROJECTION VIEW	US	16/922,877	07-Jul-2020	11,534,683	27-Dec-2022	Super League Gaming, Inc.
CLOUD-BASED GAME STREAMING	US	62/702,900	24-Jul-2018			Super League Gaming, Inc.
CLOUD-BASED GAME STREAMING	US	16/250,843	17-Jan-2019	11,260,295	01-Mar-2022	Super League Gaming, Inc.
CLOUD-BASED GAME STREAMING	WO	PCT/US2019/042859	22-Jul-2019			
CLOUD-BASED GAME STREAMING	US	17/169,110	05-Feb-2021	11,794,102	24-Oct-2023	Super League Gaming, Inc.
INTELLIGENT PRIORITIZATION AND MANIPULATION OF STREAM VIEWS	US	17/188,913	01-Mar-2021	11,794,119	24-Oct-2023	Super League Gaming, Inc.
(SLG-004) INTELLIGENT SYNCHRONIZATION OF MEDIA STREAMS	US	17/217,863	30-Mar-2021	11,601,698	07-Mar-2023	Super League Gaming, Inc.

PATENTS AND PATENT APPLICATION

Exhibit 10.2

PLACEMENT AGENCY AGREEMENT

November 6, 2023

Aegis Capital Corp.
1345 Avenue of the Americas, 27th Floor
New York, NY 10105

Re: Super League Enterprise, Inc.

Ladies and Gentlemen:

This Placement Agency Agreement ("**Agreement**") sets forth the terms upon which Aegis Capital Corp., a New York corporation ("**Aegis**" or "**Placement Agent**"), a registered broker-dealer and member of the Financial Industry Regulatory Authority ("**FINRA**"), shall be engaged by Super League Enterprise, Inc., a Delaware corporation (the "**Company**") to act as the exclusive placement agent in connection with the private placement (the "**Offering**") of shares (the "**Shares**") of Series AAA Convertible Preferred Stock, par value $0.001 per share (including all subseries of such stock, the "**Series AAA Preferred Stock**"). The Offering will consist of a minimum of 1,000 Shares (1,000,000) ("**Minimum Offering Amount**") and up to a maximum of 30,667 Shares ($30,667,000) ("**Maximum Offering Amount**") which shall be offered on a "reasonable efforts, all or none" basis as to the Minimum Offering Amount and a "reasonable efforts" basis for all amounts in excess of the Minimum Offering Amount. For purposes hereof, this Agreement shall also cover, and the term "Shares" shall include, the potential issuance and sale of another series of convertible preferred stock of the Company, with identical rights and preferences as the Series AAA Preferred Stock being sold in the Offering (except for voting provisions) and which may be sold to certain persons due to concerns relating to beneficial ownership limitations.

The purchase price for the Shares will be $1,000 per Share (the "**Offering Price**"); *provided*, *however*, that holders of shares of the Company's Series A Convertible Preferred Stock, par value $0.001 per share (the "**Series A**"), Series A-2 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-2**"), Series A-3 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-3**"), Series A-4 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-4**"), Series A-5 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-5**", and, collectively with the Series A Preferred, Series A-2 Preferred, Series A-3 Preferred, Series A-4 Preferred, the "**Series A Preferred**"), Series AA Convertible Preferred Stock, par value $0.001 per share (the "**Series AA**"), Series AA-2 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-2**"), Series AA-3 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-3**"), Series AA-4 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-4**"), and Series AA-5 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-5**", and, collectively with the Series AA, Series AA-2, Series AA-3 and Series AA-4, the " **Series AA Preferred**") may exchange up to 100% of such holder's shares of Series A Preferred and/or Series AA Preferred, as applicable, held by such holder (such shares of Series A Preferred and/or Series AA Preferred exchanged for shares of Series AAA Preferred Stock are hereinafter collectively, the "**Exchanged Shares**"), pursuant to certain minimum exchange requirements as set forth in the Exchange Agreement (as defined below). Any amounts that are exchanged into Shares pursuant to the Exchange Agreement shall not be included in calculations of whether the Minimum Offering Amount or the Maximum Offering Amount have been attained. The Placement Agent shall accept subscriptions only from persons or entities who qualify as "accredited investors," as such term is defined in Rule 501 of Regulation D ("**Regulation D**") as promulgated by the United States Securities and Exchange Commission (the "**SEC**") under Section 4(a)(2) of the Securities Act of 1933, as amended (the "**Securities Act**"). The Shares will be offered until the earlier of (i) the termination of the Offering as provided herein, (ii) the time that all Shares offered in the Offering are sold or (iii) November 30, 2023 ("**Initial Offering Period**"), which date may be extended by the Placement Agent and the Company in their joint discretion until December 31, 2023 (this additional period and the Initial Offering Period shall be referred to as the "**Offering Period**"). The date on which the Offering expires or is terminated shall be referred to as the "**Termination Date**."

With respect to the Offering, the Company shall provide the Placement Agent, on terms set forth herein, the right to offer and sell all the Shares being offered. Purchases of Shares may be made by the Placement Agent and its officers, directors, employees and affiliates. The Company, in its sole discretion, may accept or reject, in whole or in part, any prospective investment in the Shares. Notwithstanding anything to the contrary set forth herein, it is understood that no sale shall be regarded as effective unless and until accepted by the Company. The Company and the Placement Agent shall mutually agree with respect to allotting any prospective subscriber less than the number of Shares that such subscriber desires to purchase.

The Offering will be made by the Company solely pursuant to the Subscription Agreement (as defined below) and Term Sheet (as defined below), which at all times will be in form and substance reasonably acceptable to the Company, the Placement Agent and their respective counsel and contain such legends and other information as Company, the Placement Agent and their respective counsel, may, from time to time, deem necessary or desirable to be set forth therein. " **Term Sheet**" as used in this Agreement means that certain Term Sheet dated on or about October [ ], 2023, inclusive of all annexes, and all amendments, supplements and appendices thereto. "**Subscription Agreement**" as used in this Agreement means those certain Subscription Agreements, inclusive of all annexes, and all amendments, supplements and appendices thereto. The Term Sheet and the Subscription Agreement are sometimes hereinafter referred to as the "**Offering Materials**".

1. Appointment of Placement Agent. On the basis of the representations and warranties provided herein, and subject to the terms and conditions set forth herein, the Placement Agent is appointed exclusive placement agent for the Company during the Offering Period to assist the Company in finding qualified subscribers for the Offering. With the exception of a potential accounts receivable lending facility, the principal amount of which will be approximately $5,000,000 and which will be promptly disclosed in writing to the Placement Agent if entered into during the Offering Period (the "**AR Facility**"), the Placement Agent shall also have exclusivity, including the retention of sub-placement agents, during the Offering Period with respect to any other securities that the Company desires to offer for capital raise purposes. The Placement Agent may sell Shares through other broker-dealers who are FINRA members, as well as through foreign finders pursuant to applicable FINRA rules, and may reallow all or a portion of the Agent Compensation (as defined in Section 3(b) below) it receives to such other broker-dealers or foreign finders. On the basis of such representations and warranties and subject to such terms and conditions, the Placement Agent hereby accepts such appointment and agrees to perform its services hereunder diligently and in good faith and in a professional and businesslike manner and to use its reasonable efforts to assist the Company in (A) finding subscribers of Shares who qualify as "accredited investors," as such term is defined in Rule 501 of Regulation D, and (B) completing the Offering. The Placement Agent has no obligation to purchase any of the Shares. Unless sooner terminated in accordance with this Agreement, the engagement of the Placement Agent hereunder shall continue until the later of the Termination Date or the Final Closing (as defined below).

2. Representations, Warranties and Covenants of the Company. Except as set forth in the Offering Materials and any SEC Reports (as defined herein) or in the schedule of exceptions delivered to the Placement Agent on the date hereof (the "**Schedule of Exceptions**"), the representations and warranties of the Company contained in this Section 2 are true and correct as of the date of this Agreement.

(a) The Offering Materials have been prepared by the Company in compliance in all material respects with Regulation D and Section 4(a)(2) of the Act and the requirements of all other rules and regulations (the "**Regulations**") relating to offerings of the type contemplated by the Offering, and the applicable securities laws and the rules and regulations of those jurisdictions wherein the Placement Agent notifies the Company that the Shares are to be offered and sold excluding any foreign jurisdictions. The Shares will be offered and sold pursuant to the registration exemptions provided by Regulation D and Section 4(a)(2) of the Act as a transaction not involving a public offering and the requirements of any other applicable state securities laws and the respective rules and regulations thereunder in those United States jurisdictions in which the Placement Agent notifies the Company that the Shares are being offered for sale. None of the Company, or to the Company's Knowledge, its affiliates, or any person acting on its or their behalf (other than the Placement Agent, its affiliates or any person acting on its behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506(b) of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it. None of the Company, or to the Company's Knowledge, its predecessors or affiliates has been subject to any order, judgment or decree of any court of competent jurisdiction temporarily, preliminarily or permanently enjoining such person for failing to comply with Section 503 of Regulation D. Except to the extent of sales made pursuant to agreements with the Placement Agent, the Company has not, for a period of six months prior to the commencement of the offering of Shares, sold, offered for sale or solicited any offer to buy any of its securities in a manner that will be integrated with the offer and sale of the Shares pursuant to this Agreement and will cause the exemption from registration set forth in Rule 506(b) of Regulation D to become unavailable with respect to the offer and sale of the Shares pursuant to this Agreement in the United States. For purposes of this Agreement, "to the Company's Knowledge" or similar phrases means the actual knowledge of either of Ann Hand or Clayton Haynes, of a fact or matter after making reasonable inquiry.

(b) The Offering Materials do not include any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, the foregoing does not apply to any statements or omissions made solely in reliance on and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the preparation thereof. To the Company's Knowledge, none of the statements, documents, certificates or other items made, prepared or supplied by the Company with respect to the transactions contemplated hereby contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein not misleading in light of the circumstances in which they were made; *provided*, *however*, the foregoing does not apply to any statements or omissions made solely in reliance on and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the preparation thereof. There are no facts, circumstances or conditions which the Company has not disclosed in the Offering Materials or timely disclosed in any SEC Report and of which the Company is aware that has had or that could reasonably be expected to have a Company Group Material Adverse Effect (as defined in Section 2(c) below). Notwithstanding anything to the contrary herein, the Company makes no representation or warranty with respect to any estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and other forecasts and plans) that may have been delivered to the Placement Agent or its representatives or that are contained in any of the SEC Reports or Offering Materials, except that such estimates, projections and other forecasts and plans have been prepared in good faith on the basis of assumptions stated therein, which assumptions were believed to be reasonable at the time of such preparation. Any statistical and market-related data included in any SEC Reports or in the Offering Materials are, or were at the time, based on or derived from sources that the Company believes, or believed at such time, after reasonable inquiry, to be reliable and accurate in all material respects and, to the extent required, the Company has obtained the written consent to the use of such data from such sources.

(c) The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware and has the requisite power and authority to own its properties and to carry on its business as described in the Offering Materials and the SEC Reports. Section 2(c) of the Schedule of Exceptions lists each entity owned or controlled, directly or indirectly by the Company (each a "**Subsidiary**" and collectively, the "**Subsidiaries**"). Each Subsidiary is duly incorporated or formed, as applicable, validly existing and in good standing under the laws of the state or foreign jurisdiction of its incorporation or formation, as applicable, as set forth in Section 2(c) of the Schedule of Exceptions. Except as set forth on Section 2(c) of the Schedule of Exceptions, neither the Company nor any Subsidiary (i) owns or controls, directly or indirectly, any interest in any other corporation, association or other business entity or (ii) participates in any joint venture, partnership or similar arrangement. Each Subsidiary has the requisite company power to own, operate and lease its properties and to carry out its business as described in the SEC Reports. Each of the Company and the Subsidiaries (collectively referred to herein as the "**Company Group**") is qualified or licensed to do business in the jurisdictions listed in Section 2(c) of the Schedule of Exceptions, except for any failure to be so qualified or licensed that would not have a Company Group Material Adverse Effect. Each member of the Company Group is qualified or licensed to do business in all jurisdictions in which the character of the properties owned or held under lease by it or the nature of its business makes qualification necessary, except where the failure to be so qualified or licensed would not reasonably be expected to result in a Company Group Material Adverse Effect. No member of the Company Group is in violation of any provision of any of its organizational documents. As used in this Agreement, "**Company Group Material Adverse Effect**" means any event, circumstance, change or effect that, individually or in the aggregate with all other events, circumstances, changes and effects, is or is reasonably likely to be materially adverse to (i) the business, condition (financial or otherwise), assets, prospects, liabilities or results of operations of the Company and its Subsidiaries taken as a whole or (ii) the ability of the Company to consummate the transactions contemplated by this Agreement and to perform its obligations under the Transaction Documents; provided, however, that clause (i) shall not include any event, circumstance, change or effect resulting from (x) failure of the Company to receive the Approvals (as defined below), (y) changes in general economic conditions or changes in securities markets in general that do not have a materially disproportionate effect (relative to other industry participants) on the Company or its Subsidiaries or (z) general changes in the industries in which the Company and the Company Subsidiaries operate, except those events, circumstances, changes or effects that adversely affect the Company and its Subsidiaries to a materially greater extent than they affect other entities operating in such industries.

(d) The Company has all requisite corporate power and authority to enter into and perform its obligations under this Agreement, the Registration Rights Agreement substantially in the form of Exhibit B to this Agreement (the "**Registration Rights Agreement**"), the Subscription Agreement substantially in the form of Exhibit A to this Agreement (the "**Subscription Agreement**"), the Escrow Agreement (as hereinafter defined), the Exchange Agreement substantially in the form of Exhibit C (the "**Exchange Agreement**"), and the other agreements contemplated hereby (this Agreement, the Subscription Agreement, the Registration Rights Agreement, the Exchange Agreement and the other agreements contemplated hereby that the Company is executing and delivering hereunder are collectively referred to herein as the "**Transaction Documents**").

(e) Subject to the receipt of the Preferred Approval (as defined below) and Series AA Approval (as defined below), the Shares to be purchased by investors pursuant to the Offering Materials (including, solely for purposes of this subsection, the Shares that may be purchased pursuant to the Additional Investment Rights as more particularly described in Section 6 of the Subscription Agreements, subject to the Company's receipt of the Approvals and filing of all necessary documentation with the SEC) and the Agent Warrants (as defined in Section 3(b)) to be issued to the Placement Agent pursuant to the terms of this Agreement have been duly authorized for issuance and sale pursuant to this Agreement and, when issued and delivered by the Company pursuant to this Agreement against payment of the consideration set forth herein, will be duly and validly issued, fully paid and non-assessable and will have the rights, preferences and priorities set forth in the Company's Certificate of Incorporation (including the Certificate of Designation, as defined below). Subject to the approval by the holders of a majority of the Company's issued and outstanding voting securities of the adjustments to the conversion price set forth in Section 7(a)(ii) of the Certificate of Designation (the "**Conversion Price Adjustments**"), the issuance of certain additional investment rights to purchase a series of preferred stock similar in terms to the Series AAA Preferred, as set forth in Section 6 of the Subscription Agreement (the "**Additional Investment Rights**"), and the potential issuance of more than 20% of the Company's common stock upon the conversion of the Series AAA Preferred due to the Conversion Price Adjustments (collectively, the "**Stockholder Approval**"), the Common Stock issuable upon conversion of the Shares (including, for purposes of this subsection, the Shares that may be purchased pursuant to Additional Investment Rights) and Agent Warrant Shares (as defined in Section 3(b)) (collectively, the "**Conversion Shares**") have been, or will be upon the receipt of the Approvals, duly authorized and reserved for issuance and when issued by the Company upon valid conversion of the Shares and Agent Warrant Shares, will be, upon the receipt of the Approvals, duly and validly issued, fully paid and nonassessable. Subject to the Approvals, the shares of Common Stock which may be issued as dividends on the Shares (collectively, the "**Dividend Shares**"**)** have been duly authorized and reserved for issuance, and when issued by the Company in payment of dividends on the Shares, will be duly and validly issued, fully paid and nonassessable. Subject to the Approvals and the cancellation of certain warrants issued to the Placement Agent previously issued for Exchange Shares (as more specifically set forth in Section 3(b) hereinbelow), the Agent Warrant Shares have been duly authorized and reserved for issuance and when issued by the Company pursuant to the terms of the Agent Warrants, will be duly and validly issued, fully paid and nonassessable. The issuance of the Shares, Conversion Shares, Dividend Shares, Agent Warrants and Agent Warrant Shares are not subject to any preemptive or other similar rights of any securityholder of the Company that have not been waived by such parties, or for which such party's right to elect to participate in this Offering has not expired after being notified by the Company. The capital stock of the Company conforms in all material respects to all statements relating thereto contained in the SEC Reports. No holder of Shares or Agent Warrants will be subject to personal liability solely by reason of being such a holder. For the avoidance of doubt, in the event the Company does not receive any of the Approvals (as defined herein below) on or before the Effective Date of this Agreement, the Company shall not be deemed to be in breach of any representation or warranty made herein.

(f) Prior to the initial closing in the Offering (the "**First Closing**"), each of the Transaction Documents (other than this Agreement, which has already been authorized) will have been duly authorized by the Company's Board of Directors. This Agreement has been duly authorized, executed and delivered and constitutes, and each of the other Transaction Documents, upon due execution and delivery, will constitute, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms: (i) except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect related to laws affecting creditors' rights generally, including the effect of statutory and other laws regarding fraudulent conveyances and preferential transfers, and except that no representation is made herein regarding the enforceability of the Company's obligations to provide indemnification and contribution remedies under the securities laws; (ii) subject to the limitations imposed by general equitable principles (regardless of whether such enforceability is considered in a proceeding at law or in equity); and (iii) subject to the receipt of the receipt by the Company of (A) the consent of a majority of the holders of each of the Company's (I) Series A Convertible Preferred Stock, par value $0.001 per share (the "**Series A Preferred**"), (II) Series A-2 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-2 Preferred**"), (III) Series A-3 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-3 Preferred**"), (IV) Series A-4 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-4 Preferred**"), (V) Series A-5 Convertible Preferred Stock, par value $0.001 per share (the "**Series A-5 Preferred**", and, collectively with the Series A Preferred, Series A-2 Preferred, Series A-3 Preferred and Series A-4 Preferred, the " **Series A Stock**"), (VI) Series AA Convertible Preferred Stock, par value $0.001 per share (the "**Series AA Preferred**"), (VII) Series AA-2 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-2 Preferred**"), (VIII) Series AA-3 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-3 Preferred**"), (IX) Series AA-4 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-4 Preferred**"), and (X) Series AA-5 Convertible Preferred Stock, par value $0.001 per share (the "**Series AA-5 Preferred**", and, collectively with the Series AA Preferred, Series AA-2 Preferred, Series AA-3 Preferred and Series AA-4 Preferred, the " **Series AA Stock**"), consenting to the authorization and issuance of the Series AAA Preferred Stock as separate classes ((I) through (IX), collectively, the " **Preferred Approval**"), (B) the consent of the holders of a majority of each of the Series AA Preferred, Series AA-2 Preferred, Series AA-3 Preferred, Series AA-4 Preferred, and Series AA-5 Preferred, voting as separate classes, to consent to the potential issuance of shares of the Company's Common Stock below the conversion price floor for each respective class of Series AA Preferred (the " **Series AA Approval**"), and (C) the Stockholder Approval (collectively with the Preferred Approval and the Series AA Approval, the "**Approvals**").

(g) Subject to the Company's receipt of the Approvals, neither the execution and the delivery of this Agreement or any Transaction Document, nor the consummation of the transactions contemplated hereby, will (with or without the passage of time or giving of notice): (i) to the Company's Knowledge, violate any injunction, judgment, order, decree, ruling, charge or other restriction, or any Law (as defined below) applicable to any member of the Company Group, (ii) violate any provisions of any of the charter documents of any member of the Company Group, (iii) violate or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a violation or default) under, result in the termination of, accelerate the performance required by any of the material terms, conditions or provisions of any Material Contract (as defined in Section 2(n) below) of any member of the Company Group, or by which any member of the Company Group, or any of its respective operating assets, is bound or (iv) result in the creation of any lien, charge or other encumbrance on the assets or properties of any member of the Company Group. "**Law**" means any applicable federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision.

(h) The Company has filed all reports, schedules, forms, statements and other documents required to be filed by the Company under the Securities Act and the Securities and Exchange Act of 1934, as amended (the "**Exchange Act**"), including pursuant to Section 13(a) or 15(d) thereof, for the two years preceding the date hereof (or such shorter period as the Company was required by law or regulation to file such material) (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "**SEC Reports**") on a timely basis or has received a valid extension of such time of filing and has filed any such SEC Reports prior to the expiration of any such extension. The SEC Reports (i) complied in all material respects with the requirements of the Securities Act and the Exchange Act, as applicable, and (ii) none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) The financial statements included in the SEC Reports, together with the related schedules and notes, present fairly, in all material respects, the financial position of the Company and its Subsidiaries, at the dates indicated and its results of operations, stockholders' equity and cash flows for the periods specified; said financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("**GAAP**") applied on a consistent basis throughout the periods involved (except for any preparation of non-GAAP measures). The supporting schedules, if any, present fairly, in all material respects, in accordance with GAAP the information required to be stated therein. Except as set forth in such financial statements or otherwise disclosed in the Schedule of Exceptions attached hereto, or in the SEC Reports, neither the Company nor any Subsidiary has any known material liabilities of any kind, whether accrued, absolute or contingent, or otherwise.

(j) Since the date of the Company's most recent financial statements contained in the SEC Reports, there has been no Company Group Material Adverse Effect.

(k) Subject to the Company's receipt of the Preferred Approval and Series AA Approval, as of the date hereof, the Company will have the authorized and outstanding capital stock as described in Section 2(k) of the Schedule of Exceptions. All outstanding shares of capital stock of the Company are duly authorized, validly issued and outstanding, fully paid and non-assessable. Except as described in the SEC Reports, or in regard to either the Series AAA Stock or the AR Facility, as of the date of the First Closing: (i) there will be no outstanding options, stock subscription agreements, warrants or other rights permitting or requiring the Company or others to purchase or acquire any shares of capital stock or other equity securities of the Company or to pay any dividend or make any other distribution in respect thereof; (ii) there will be no securities issued or outstanding which are convertible into or exchangeable for any of the foregoing and there are no contracts, commitments or understandings, whether or not in writing, to issue or grant any such option, warrant, right or convertible or exchangeable security; (iii) except for shares of Common Stock reserved for conversion of the Series AA Preferred at the respective conversion price floor of each series of Series AA Preferred, no shares of stock or other securities of the Company are reserved for issuance for any purpose; (iv) with the exception of the receipt of the Approvals by way of written consent, there will be no voting trusts or other contracts, commitments, understandings, arrangements or restrictions of any kind with respect to the ownership, voting or transfer of shares of stock or other securities of Company, including, without limitation, any preemptive rights, rights of first refusal, proxies or similar rights, and (v) no person holds a right to require Company to register any securities of Company under the Act or to participate in any such registration.

(l) The Certificate of Designation of Preferences, Rights, and Limitations of the Series AAA Preferred Stock of the Company (including, for these purposes, each sub-series of such stock), the proposed form of which is attached hereto as Exhibit [E] (the "**Certificate of Designation**"), has been duly authorized by the Company and will have been duly executed and delivered by the Company and duly filed with the Secretary of State of the State of Delaware before the First Closing, subject to receipt of the Approvals. The holders of each subseries of Series AAA Preferred Stock will have the rights set forth in the applicable Certificate of Designation that will be filed with the Secretary of State of the State of Delaware.

(m) The conduct of business by members of the Company Group as presently and proposed to be conducted is not subject to continuing oversight, supervision, regulation or examination by any governmental official or body of the United States, or any other jurisdiction wherein any such members currently conduct such business, except as described in the SEC Reports. Neither the Company, nor any other member of the Company Group has received any notice of any violation of, or noncompliance with, any Law applicable to its business, the violation of, or noncompliance with, which would have or would reasonably be expected to have a Company Group Material Adverse Effect, and the Company knows of no facts or set of circumstances which could give rise to such a notice.

(n) Each member of the Company Group has all franchises, permits, authorizations, licenses, and any similar authority necessary for the conduct of its business as described in the SEC Reports, except as would not, individually or in the aggregate, reasonably be expected to have a Company Group Material Adverse Effect. Except as disclosed in the SEC Reports, no member of the Company Group has received written notice of (i) any pending proceedings which could reasonably be expected to result in the revocation, cancellation, suspension of any adverse modification of any such franchises, permits, authorizations, licenses or other similar authority or (ii) any default under any of such franchises, permits, licenses, authorizations or other similar authority, except as would not, individually or in the aggregate, reasonably be expected to have an Company Group Material Adverse Effect.

(o) Except as disclosed herein, or in the SEC Reports, no breach or default by any member of the Company Group or any other party exists in the due performance under any of the terms of any note, bond, indenture, mortgage, deed of trust, lease, rental agreement, material contract, material purchase or sales order or other material agreement or instrument to which any member of the Company Group is a party or by which it or its property is bound or affected (each of the foregoing, a "**Material Contract**"), and there exists no condition, event or act which constitutes, nor which after notice, the lapse of time or both, could constitute a default under any of the foregoing, except as would not, individually or in the aggregate, has had or is reasonably be expected to have an Company Group Material Adverse Effect. The Material Contracts disclosed in the SEC Reports are in all material respects accurately described and are in full force and effect in accordance with their respective terms, subject to any applicable bankruptcy, insolvency or other laws affecting the rights of creditors generally and to general equitable principles and the availability of specific performance.

(p) The members of the Company Group collectively, solely and exclusively own all right, title and interest in, or possesses enforceable rights to use, all patents, patent applications, trademarks, service marks, copyrights, rights, licenses, franchises, trade secrets, confidential information, processes and formulations necessary for the conduct of its business as now conducted (collectively, the "**Intangibles**"), except where the failure to own or possess such rights would not, individually or in the aggregate, would reasonably be expected to have a Company Group Material Adverse Effect. To the Company's Knowledge, no member of the Company Group has infringed upon the rights of others with respect to the Intangibles and, except as disclosed in the SEC Reports, no member of the Company Group has received any notice that such member has or may have infringed or is infringing upon the rights of others with respect to the Intangibles, nor has such member received any written notice of conflict with the asserted rights of others with respect to the Intangibles. To the Company's Knowledge, all such Intangibles are enforceable and no others have infringed upon the rights of any members of the Company Group with respect to the Intangibles. None of the Company Group's material Intangibles have expired or terminated, or are expected to expire or terminate, within three years from the date of this Agreement. All current and former officers, employees, consultants and independent contractors of each member of the Company Group having access to proprietary information of a member of the Company Group, its customers or business partners and inventions owned by any member of the Company Group have executed and delivered to the applicable member of the Company Group an agreement regarding the protection of such proprietary information. The Company Group has secured, by valid written assignments from all of Company Group's current and former consultants, independent contractors and employees, to the extent such individuals have not breached any covenants, representations, or warranties made to the Company in such assignments, who were involved in, or who contributed to, the creation or development of any Intangibles, unencumbered and unrestricted exclusive ownership of each such third party's Intangibles in their respective contributions, except where the failure to do so would not individually or in the aggregate, reasonably be expected to have a Company Group Material Adverse Effect. No current or former employee, officer, director, consultant or independent contractor of any member of the Company Group has any right, license, claim or interest whatsoever in or with respect to any Intangibles owned by the Company.

(q) Except as set forth in the SEC Reports, no member of the Company Group is a party to any collective bargaining agreement nor does it employ any member of a union. No executive officer of any member of the Company Group has provided written notice that such officer intends to leave the Company Group or otherwise terminate such officer's employment with the Company Group. No executive officer of any member of the Company Group, to the Company's Knowledge, is in violation of any material term of any employment contract, confidentiality, disclosure or proprietary information agreement, non-competition agreement, or any other contract or agreement or any restrictive covenant, and the continued employment of each such executive officer does not subject the Company Group to any material liability with respect to any of the foregoing matters. To the Company's Knowledge, each member of the Company Group is in compliance with all federal, state, local and foreign laws and regulations respecting labor, employment and employment practices and benefits, terms and conditions of employment and wages and hours, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Company Group Material Adverse Effect. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the Company's Knowledge, is threatened, and the Company has no knowledge of any existing or imminent labor dispute by the employees of any of its principal suppliers, manufacturers, customers or contractors.

(r) Except (i) as set forth in the SEC Reports, (ii) as may be required under state securities or Blue Sky laws, (iii) as may be required under the Securities Act, the rules and regulations of the Commission under the Securities Act (the "**Securities Act Regulations**"), Exchange Act, the rules and regulations of the SEC under the Exchange Act (the "**Exchange Act Regulations**"), the rules of Nasdaq (the "**Exchange**"), (iv) for the consents and approvals set forth in the Preferred Approval and the Series AA Approval, (v) for the consents and approvals set forth in the Stockholder Approval, or (vi) will have been obtained or made on or prior to the First Closing, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with any court or governmental authority or other Person on the part of any member of the Company Group is required in connection with the issuance or sale of the Shares or the consummation of the transactions contemplated herein or in the other Transaction Documents.

(s) Subsequent to the respective dates as of which information is given in the Offering Materials or in any SEC Report, each of the members of the Company Group has operated their respective businesses in the ordinary course and, except as may otherwise be set forth in the SEC Reports or in respect to additional shares of Series A Stock or Series AA Stock that have been issued to date, there has been no: (i) Company Group Material Adverse Effect; (ii) transaction otherwise than in the ordinary course of business consistent with past practice; (iii) issuance of any securities (debt or equity) or any rights to acquire any such securities other than the AR Facility or pursuant to equity incentive plans approved by its board of directors; (iv) damage, loss or destruction, whether or not covered by insurance, with respect to any asset or property of any members of the Company Group or (v) agreement to permit any of the foregoing.

(t) Except as set forth in the Offering Materials or in any SEC Reports, there are no actions, suits, claims, hearings or proceedings pending before any court or governmental authority or, to the Company's Knowledge, threatened, against any members of the Company Group, or involving its assets or any of its officers or directors (in their capacity as such) which, if determined adversely to such member of the Company Group or such officer or director, could reasonably be expected to have a Company Group Material Adverse Effect. No member of the Company Group is a party or subject to the provisions of any material order, writ, injunction, judgment or decree of any governmental authority that has not been satisfied in full or otherwise discharged.

(u) Subject to, and the representation of which is expressly conditioned upon, the Company's receipt of the Approvals, no member of the Company Group is: (i) in violation of its charter documents, (ii) in violation of any statute, rule or regulation applicable to such member, the violation of which would have or would reasonably be expected to have a Company Group Material Adverse Effect; or (iii) in violation of any judgment, decree or order of any court or governmental body having jurisdiction over such member of the Company Group, which violation or violations individually, or in the aggregate, could reasonably be expected to have a Company Group Material Adverse Effect.

(v) Except as disclosed in any SEC Reports, no director, officer or manager of the Company or any Subsidiary or, to the Company's Knowledge, none of the shareholders of the Company, any interest in any Person which is a competitor, supplier or customer of any member of the Company Group (unless such person is a publicly traded company), (ii) owns, directly or indirectly, in whole or in part, any property, asset or right, real, personal or mixed, tangible or intangible (including any of the Intangibles) which is utilized by or in connection with the business of any member of the Company Group, (iii) is a customer of, or supplier to, any member of the Company Group or (iv) directly or indirectly has an interest in or is a party to any Material Contract pertaining or relating to any member of the Company Group. In addition, no director, officer or employee of the Company, nor any affiliate of any such person nor to the Company's Knowledge, no shareholder of the Company, is presently, directly or indirectly through his/her affiliation with any other person or entity, a party to any loan from any member of the Company Group.

(w) Each of the Company and the Subsidiaries has filed, on a timely basis, each federal, state, local and foreign tax return, report and declarations that were required to be filed, or has requested an extension therefor and has paid all taxes and all related assessments, charges, penalties and interest to the extent that the same have become due. There are no unpaid taxes in any material amount claimed in writing to be due by the taxing authority of any jurisdiction, and the officers of the Company know of no basis for any such claim. Neither the Company nor any Subsidiary has executed any waiver with respect to the statute of limitations relating to the assessment or collection of any foreign, federal, state or local tax. To the Company's Knowledge, none of the Company Group's tax returns is presently being audited by any taxing authority. No liens have been filed and no claims are being asserted by or against any member of the Company Group with respect to any taxes (other than liens for taxes not yet due and payable). The Company has received no notice of assessment or proposed assessment of any taxes claimed to be owed by it or any other Person on its behalf. Except as disclosed any SEC Reports, neither the Company nor any Subsidiary is a party to any tax sharing or tax indemnity agreement or any other agreement of a similar nature that remains in effect. The Company and the Subsidiaries have complied in all material respects with all applicable legal requirements relating to the payment and withholding of taxes and, within the time and in the manner prescribed by law, has withheld from wages, fees and other payments and paid over to the proper governmental or regulatory authorities all amounts required.

(x) Except as otherwise disclosed in any SEC Reports, (i) each member of the Company Group has at all times conducted and currently conducts its business in compliance, in all material respects, with all Environmental Laws (as defined below), including having and complying with all environmental permits, licenses and other approvals and authorizations necessary for the operation of its business as presently conducted, (ii) no member of the Company Group has received any communication from any arbitrator, court, governmental body, regulatory body, administrative agency or other authority, body or agency having jurisdiction over the Company, any of its Subsidiaries or any of their respective properties, assets or operations (each, a "**Governmental Entity**") or any other Person alleging that it may be or was in violation of, or liable under, any Environmental Law, and (iii) there is no claim pending, or to the Company's Knowledge, threatened, against the Company or any member of the Company Group arising under any Environmental Law. For purposes hereof, "**Environmental Law**" means any applicable Federal, state, local or foreign laws, relating to (a) the protection, preservation or restoration of the environment (including, air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource) or (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances, in each case as amended and as in effect on the date hereof. "**Hazardous Substance**" means any substance listed, defined, designated or classified as hazardous, toxic, radioactive, or dangerous, or otherwise regulated, under any Environmental Law. Hazardous Substance includes any substance for which exposure is regulated by any Governmental Entity or any Environmental Law including, but not limited to, any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, petroleum or any derivative or by-product thereof, radon, radioactive material, asbestos, or asbestos containing material, urea formaldehyde foam insulation, lead or polychlorinated biphenyls.

(y) Except as disclosed in any SEC Reports, neither the Company nor any Subsidiary owns any real property. Each of the Company and the Subsidiaries has good and marketable title to all personal property and assets reflected as owned by it in the financial statements referred to in Section 2(h) above and which are material to the business of the Company or such Subsidiary, in each case free and clear of any security interests, mortgages, liens, encumbrances, claims and other defects, except as may be required under the AR Facility or such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property. The real property, improvements, equipment and personal property held under lease by each of the Company and the Subsidiaries are held under valid and enforceable leases, with such exceptions as are not material, and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property. With respect to the property and assets leased, each member of the Company Group is in compliance with such leases, except where failure to be in compliance would not, either individually or in the aggregate, reasonably be expected to result in a Company Group Material Adverse Effect.

(z) Each member of the Company Group and any "employee benefit plan" (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, "**ERISA**")) established or maintained by the Company, the Subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with ERISA. "**ERISA Affiliate**" means, with respect to the Company or a Subsidiary, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended, and the regulations and published interpretations thereunder (the "**Code**") of which the Company or such Subsidiary is a member. Each "employee benefit plan" established or maintained by the Company, its Subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(aa) Neither the Company, any Subsidiary, nor, to the Company's Knowledge, any director, officer, agent, employee or other Person acting on behalf of any of such entities has, in the course of its actions for, or on behalf of, the Company or any Subsidiary has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, its Subsidiaries and, to the Company's Knowledge, its and their respective affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(bb) The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the "**Money Laundering Laws**"); and no action, suit or proceeding by or before any Governmental Entity involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(cc) Neither the Company, any of its Subsidiaries nor, to the Company's Knowledge, its or their respective directors, officers, agents, employees or affiliates are currently the subject of sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority applicable to the Company and its Subsidiaries (collectively, "**Sanctions**"), nor is the Company or any of its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions; and the Company does not intend to, directly or indirectly, use the proceeds of the sale of the Securities, or lend, contribute or otherwise make available such proceeds to any subsidiaries, joint venture partners or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, purchaser or otherwise) of Sanctions.

(dd) Except as disclosed to the Placement Agent in writing, no member of the Company Group is obligated to pay, and has not obligated the Placement Agent to pay, a finder's or origination fee in connection with the Offering (other than to the Placement Agent or any sub-placement agents), and the Company hereby agrees to indemnify the Placement Agent from any such claim made by any other person not approved by the Placement Agent, as more fully set forth in Section 8 hereof. Except as disclosed to the Placement Agent, the Company has not offered for sale or solicited offers to purchase the Shares except for negotiations with the Placement Agent. The Placement Agent acknowledges that the disclosure in any future SEC Reports of the Series AAA placement agency agreement and this Agreement, shall not represent a breach of any representation or warranty so long as Placement Agent's identity is removed from such disclosures.

(ee) Except as described in any SEC Reports, the Company maintains an effective system of "disclosure controls and procedures" (as defined in Rule 13a-15(e) of the Exchange Act) that complies with the requirements of the Exchange Act and that has been designed to ensure that information required to be disclosed by the Company in reports t*h*at it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, including controls and procedures designed to ensure that such information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure.

(ff) Except as described in any SEC Reports, the Company maintains effective internal control over financial reporting (as defined under Rule 13a-15 and 15d-15 of the Exchange Act Regulations) and a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management's general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization and (D) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences Except as described in any SEC Reports, since the end of the Company's most recent audited fiscal year, there has been (1) no material weakness in the Company's internal control over financial reporting (whether or not remediated) and (2) no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

(gg) Each of the Company and the Subsidiaries is insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are prudent and customary in the business in which it is engaged, including directors and officers' liability.

(hh) The Company's Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act and is listed on the Exchange; the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange; except as set forth in any SEC Reports, the Company has not received any notice that it is out of compliance with the listing or maintenance requirements of the Exchange and the Company is, and will continue to be, in material compliance with all such listing and maintenance requirements; and the Company has not received any notification that the SEC or the Exchange is contemplating terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Exchange.

(ii) The Company, and all Company Related Persons (as defined below) are not subject to any of the disqualifications set forth in Rule 506(d) of Regulation D (each a "**Disqualification Event**"). The Company has exercised reasonable care to determine whether any Company Related Person is subject to a Disqualification Event. The SEC Reports contains a true and complete description of the matters required to be disclosed with respect to the Company and the Company Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, "**Company Related Persons**" means any predecessor of the Company, any affiliated Company, any director, executive officer, other officer of the Company participating in the Offering, any general partner or managing member of the Company, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, and any "promoter" (as defined in Rule 405 under the Act) connected with the Company in any capacity. The Company agrees to promptly notify the Placement Agent in writing of (i) any Disqualification Event relating to any Company Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Company Related Person.

(jj) No representation or warranty by the Company contained in Section 2 of this Agreement and no statement by the Company contained in the Schedule of Exceptions to this Agreement contains any material untrue statement of a material fact or omits to state a material fact necessary to make the statements contained therein, in the light of the circumstances in which they are made, not misleading.

(kk) Until the earlier of (i) the Termination Date and (ii) the Final Closing, the Company will not issue any press release, grant any interview, or otherwise communicate with the media in any manner whatsoever with respect to the Offering without the Placement Agent's prior consent, which consent will not unreasonably be withheld, delayed or conditioned; *provided*, *however*, the Company shall in no way be liable to Placement Agent, or otherwise be determined to be in breach of this Agreement, in the event the Company files any report that may potentially be determined to be a communication regarding, or with respect to, the Offering, if such report is required to be filed by Law, and the Company provided Placement Agent an opportunity to comment on such report at least six (6) hours prior to the deadline for the filing of such report.

2A. Representations, Warranties and Covenants of Placement Agent. The Placement Agent represents and warrants to Company that the following representations and warranties are true and correct as of the date of this Agreement:

(a) Aegis is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to enter into this Agreement and to carry out and perform its obligations under the terms of this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the Placement Agent, and upon due execution and delivery by the Company, this Agreement will be a valid and binding agreement of the Placement Agent enforceable against it in accordance with its terms, except as may be limited by principles of public policy and, as to enforceability, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws relating to or affecting creditor's rights from time to time in effect and subject to general equity principles.

(c) The Placement Agent is a member in good standing of FINRA and is registered as a broker-dealer under the Exchange Act, and under the securities acts of each state into which it is making offers or sales of the Shares. The Placement Agent is in compliance with all applicable rules and regulations of the SEC and FINRA, except to the extent that such noncompliance would not have a material adverse effect on the transactions contemplated hereby. None of the Placement Agent or its affiliates, or any person acting on behalf of the foregoing (other than Company or its affiliates or any person acting on its or their behalf, in respect of which no representation is made) has taken nor will it take any action that conflicts with the conditions and requirements of, or that would make unavailable with respect to the Offering, the exemption(s) from registration available pursuant to Rule 506 of Regulation D or Section 4(a)(2) of the Act, or knows of any reason why any such exemption would be otherwise unavailable to it.

(d) None of the execution and delivery of or performance by the Placement Agent under this Agreement or any other agreement or document entered into by the Placement Agent in connection herewith or the consummation of the transactions herein or therein contemplated conflicts with or violates, any agreement or other instrument to which the Placement Agent is a party or by which its assets may be bound, or any term of its certificate of incorporation or by-laws, or any license, permit, judgment, decree, order, statute, rule or regulation applicable to Placement Agent or any of its assets, except in each case as would not have a material adverse effect on the transactions contemplated hereby.

(e) Neither Placement Agent nor any Placement Agent Related Persons (as defined below) are subject to any Disqualification Event. Placement Agent has exercised reasonable care to determine whether any Placement Agent Related Person is subject to a Disqualification Event. The Offering Materials contain a true and complete description of the matters required to be disclosed with respect to Placement Agent and Placement Agent Related Persons pursuant to the disclosure requirements of Rule 506(e) of Regulation D, to the extent applicable. As used herein, "**Placement Agent Related Persons**" means any director, general partner, managing member, executive officer, or other officer of Placement Agent participating in the Offering. Placement Agent agrees to promptly notify the Company in writing of (i) any Disqualification Event relating to any Placement Agent Related Person and (ii) any event that would, with the passage of time, become a Disqualification Event relating to any Placement Agent Related Person.

3. Placement Agent Compensation.

(a) In connection with the Offering, the Company will pay at each Closing (as defined in Section 4(e) below) a cash fee (the "**Agent Cash Fee**") to the Placement Agent equal to 10% of the gross cash proceeds from the sale of the Shares consummated at such Closing. For the avoidance of doubt, (i) the consummation of the sale of Shares pursuant to the Additional Investment Rights will be considered a "Closing" for purposes of payment of the Agent Cash Fee; and (ii) Placement Agent shall not receive a cash fee with respect to the shares of Series A Stock and/or Series AA Stock that are exchanged for shares of Series AAA Preferred.

(b) As additional compensation, at or within ten (10) business days following the Final Closing, the Company will issue to the Placement Agent (or its designee(s)) for nominal consideration, a five-year warrants (the "**Agent Warrants**") to purchase such number of shares of the Company's common stock as is equal to 14.5% of the shares of Common Stock initially issuable upon conversion of the Shares sold at each closing in this Offering and pursuant to the Shares issued pursuant to the Additional Investment Rights as described in the Offering Materials (the "**Agent Warrant Shares**"), at an exercise price equal to the Conversion Price of the Shares issued at such closing or the time of purchase of shares pursuant to the Additional Investment Right (the Agent Cash Fee and Agent Warrants are sometimes referred to herein collectively as "**Agent Compensation**"). The Agent Warrants will be exercisable on a "cashless" basis and for the five-year period following issuance and shall be afforded comparable price protections as the Shares. The Agent Warrants will be in such authorized denominations and will be registered in such names as the Placement Agent shall request in an instruction letter (the "**Agent Warrant Instruction Letter**") to be delivered to the Company promptly following the Final Closing and the Company shall deliver such Agent Warrants to the Placement Agent within ten (10) business days following the delivery of the Agent Warrant Instruction Letter. For the avoidance of doubt, the consummation of the sale of Shares pursuant to the Additional Investment Rights will be considered a "Closing" for purposes of payment of the Agent Warrants. In addition, with respect to Shares issued in the Exchange ("**Exchange Shares**"), the Placement Agent shall be entitled to exchange previously issued placement agent warrants to purchase Series A Preferred Stock and/or Series AA Preferred Stock so exchanged and receive additional Agent Warrants to purchase 14.5% of the shares of Common Stock underlying the Exchange Shares at an exercise price equal to the Conversion Price of the Exchange Shares and exercisable for a five-year period, with comparable price protections as the Shares.

(c) At each Closing, the Company will pay Aegis a non-accountable expense allowance equal to 2% of the aggregate purchase price of the Shares sold at such Closing (the "**Agent Expense Allowance**"). The Placement Agent will not bear any of the Company's legal, accounting, printing or other expenses in connection with any transaction contemplated hereby. Aegis will pay for its own expenses, including all its legal fees and expenses, from the Agent Expense Allowance.

(d) The Company shall also pay and issue to the Placement Agent the Agent Compensation calculated according to the percentages set forth in Sections 3(a) and (b) of this Agreement, if any person or entity contacted by the Placement Agent and provided with Offering Materials during the Offering Period and with whom the Placement Agent has discussions regarding a potential investment in the Offering, invests in the Company (other than through open or public market purchases or securities purchased in any underwritten public offering) and irrespective of whether such potential investor purchased Shares in the Offering (the "**Tail Investors**") at any time prior to the earlier of the date that is twelve (12) months after the Termination Date or the Final Closing ("**Tail Period**"), whichever is applicable. The names of Tail Investors shall be provided in writing by the Placement Agent to the Company upon written request following the Termination Date or the Final Closing, as the case may be (the "**Tail Investor List**"). The Company acknowledges and agrees that the Tail Investor List is proprietary to the Placement Agent, shall be maintained in strict confidence by the Company and those persons/entities on such list shall not be contacted by the Company without the Placement Agent's prior written consent; *provided*, *however*, that such restrictions shall not apply to ordinary course shareholder communications by the Company to its shareholders, including those Tail Investors that are shareholders of the Company. In the event the Placement Agent exercises its right of first refusal with respect to an offering pursuant to the provisions of Section 3(e) below, the specific compensation terms to the Placement Agent that are negotiated in such offering shall govern and the provisions of this Section 3(d) will not be operative with respect to such offering.

(e) Effective upon the sale of at least the Minimum Offering Amount, the Company agrees to grant to Aegis, for a period of six (6) months following the Final Closing (the "**ROFR Term**"), the irrevocable preferential right of first refusal to act as lead placement agent for any proposed private placement of the Company's securities (equity or debt) that is proposed to be consummated to investors in the United States with the assistance of a registered broker dealer; *provided*, *however*, the right granted in this Section 3(e) shall not apply to any Strategic Financing Alternative so long as such alternative is not facilitated by a broker and/or dealer registered with the Financial Industry Regulatory Authority. In that regard, it is understood that if the Company determines to pursue such a financing during the ROFR Term and wishes to engage a placement agent to assist in connection with such offering, the Company shall promptly provide the Placement Agent with a written notice of such intention and statement of terms (the "Notice"). If, within ten (10) business days of the receipt of the Notice, the Placement Agent does not accept in writing such offer to act as lead placement agent with respect to such offering upon the terms proposed, then the Company shall be entitled to engage a placement agent other than Aegis; provided that the terms of the compensation to be paid to such other placement agent or underwriter are not materially less favorable to the Company than the terms included in the Notice. The Placement Agent's failure to exercise these preferential rights in any situation shall not affect its preferential rights to any subsequent offering during the ROFR Term. The Company represents and warrants that no other person has any right to participate in any offer, sale or distribution of the Company's securities to which Aegis' preferential rights shall apply. For purposes of this Section 3(e), "Strategic Financing Alternative" means 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.

4. Subscription and Closing Procedures.

(a) The Company shall cause to be delivered to the Placement Agent copies of the Offering Materials, consents to the use of such copies for the purposes permitted by the Act and applicable securities laws and in accordance with the terms and conditions of this Agreement, and hereby authorizes Placement Agent and its agents and employees to use the Offering Materials in connection with the offering of the Shares until the earlier of (i) the Termination Date or (ii) the Final Closing. No person or entity is or will be authorized to give any information or make any representations other than those contained in the Offering Materials or to use any offering materials other than those contained in the Offering Materials in connection with the sale of the Shares.

(b) During the Offering Period, the Company shall make available to the Placement Agent and its representatives such information as may be reasonably requested in making a reasonable investigation of the Company Group and their respective affairs and shall provide access to such employees during normal business hours as shall be reasonably requested by the Placement Agent.

(c) Each prospective purchaser will be required to complete and execute an original signature pages to the Subscription Agreement (the '**Subscription Documents**"), which will be forwarded or delivered to the Placement Agent at the Placement Agent's offices at the address set forth in Section 12 hereof, together with the subscriber's wire transfer in the full amount of the purchase price for the number of Shares desired to be purchased, subject to the Escrow Agent's (as defined below) right to accept a check in lieu of a wire transfer.

(d) All funds for subscriptions received by the Placement Agent from the Offering (not otherwise wired directly to the Escrow Agent) will be promptly forwarded by the Placement Agent and deposited into a non-interest-bearing escrow account (the "**Escrow Account**") established for such purpose with and Continental Stock Transfer & Trust Company (the "**Escrow Agent**"). All such funds for subscriptions will be held in the Escrow Account pursuant to the terms of an escrow agreement among the Company, the Placement Agent and the Escrow Agent (the " **Escrow Agreement**"). The Company will pay all fees related to the establishment and maintenance of the Escrow Account and comply with procedures required by the Escrow Agent. The Company will either accept or reject, for any or no reason, the Subscription Documents in a timely fashion and at each Closing, the Company will countersign the Subscription Documents and provide duplicate copies of such documents to the Placement Agent for distribution to the subscribers. The Placement Agent, on the Company's behalf, will promptly return to subscribers incomplete, improperly completed, improperly executed and rejected subscriptions.

(e) If subscriptions for at least the Minimum Offering Amount have been accepted prior to the Termination Date, the funds therefor have been collected by the Escrow Agent and all of the conditions set forth elsewhere in this Agreement are fulfilled, the First Closing shall be held promptly with respect to Shares sold. Thereafter remaining Shares will continue to be offered and sold until the Termination Date and additional closings (each a "**Closing**") may from time to time be conducted at times mutually agreed to by the Placement Agent and the Company with respect to additional Shares sold, with the final closing ("**Final Closing**") to occur within ten (10) days after the earlier of the Termination Date and the date on which the all Shares has been fully subscribed for. Delivery of payment for the accepted subscriptions for Shares from funds held in the Escrow Account will be made at each Closing against delivery of the Shares by the Company. The Shares will be issued to the investors in the Offering in book entry format at each Closing.

(f) If Subscription Documents for at least the Minimum Offering Amount have not been received and accepted by the Company on or before the Termination Date for any reason, the Offering will be terminated, no Shares will be sold, and pursuant to the terms of the Escrow Agreement, the Escrow Agent will, at the Company's and the Placement Agent's written direction, cause all monies received from subscribers for the Shares to be promptly returned to such subscribers without interest, penalty, expense or deduction and the Placement Agent and Company will promptly cooperate to accomplish the foregoing, including providing Escrow Agent with any requested written instructions in such regard.

5. Further Covenants. The Company hereby covenants and agrees that:

(a) Except upon prior written notice to the Placement Agent, the Company shall not, at any time prior to the Final Closing, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date).

(b) If, at any time prior to the Final Closing, any event shall occur that causes a Company Group Material Adverse Effect or otherwise which as a result it becomes necessary to amend or supplement any of the Offering Materials so that the representations and warranties herein remain true and correct in all material respects, or in case it shall be necessary to amend or supplement any of the Offering Materials to comply with Regulation D or any other applicable securities laws or regulations, the Company will promptly notify the Placement Agent and shall, at its sole cost, prepare and furnish to the Placement Agent copies of appropriate amendments and/or supplements in such quantities as the Placement Agent may reasonably request for delivery by the Placement Agent to potential subscribers. The Company will not at any time before the Final Closing prepare or use any amendment or supplement to the Offering Materials of which the Placement Agent will not previously have been advised and furnished with a copy, or which is not in compliance in all material respects with the Act and other applicable securities laws. As soon as the Company is advised thereof, the Company will advise the Placement Agent and its counsel, and confirm the advice in writing, of any order preventing or suspending the use of the Offering Materials, or the suspension of any exemption for such qualification or registration thereof for offering in any jurisdiction, or of the institution or threatened institution of any proceedings for any of such purposes, and the Company will use its reasonable best efforts to prevent the issuance of any such order and, if issued, to obtain as soon as reasonably possible the lifting thereof.

(c) The Company shall comply with the Act, the Exchange Act and the rules and regulations thereunder, all applicable state securities laws and the rules and regulations thereunder in the states in which the Company's blue sky counsel has advised the Placement Agent that the Shares are qualified or registered for sale or exempt from such qualification or registration, so as to permit the continuance of the sales of the Shares, and will file or cause to be filed with the SEC, and shall promptly thereafter forward or cause to be forwarded to the Placement Agent, any and all reports on Form D as are required.

(d) The Company shall use its best efforts to qualify the Shares for sale under the securities laws of such jurisdictions in the United States as may be mutually agreed to by the Company and the Placement Agent, and Company will make or cause to be made such applications and furnish information as may be required for such purposes, provided that Company will not be required to qualify as a foreign corporation in any jurisdiction or execute a general consent to service of process. The Company will, from time to time, prepare and file such statements and reports as are or may be required to continue such qualifications in effect for so long a period as the Placement Agent may reasonably request with respect to the Offering.

(e) The Company shall place a legend on the certificates representing the Shares and the Agent Warrants that the securities evidenced thereby have not been registered under the Act or applicable state securities laws, setting forth or referring to the applicable restrictions on transferability and sale of such securities under the Act and applicable state laws.

(f) The Company shall apply the net proceeds from the sale of the Shares for the purposes substantially as described in the Term Sheet. Except as set forth in the Term Sheet, the Company shall not use any of the net proceeds of the Offering to repay indebtedness to officers (other than accrued salaries incurred in the ordinary course of business), directors or shareholders of the Company without the prior written consent of the Placement Agent.

(g) During the Offering Period, the Company shall afford each prospective purchaser of Shares the opportunity to ask questions of and receive answers from an officer of the Company concerning the terms and conditions of the Offering and the opportunity to obtain such other additional information necessary to verify the accuracy of the Offering Materials to the extent the Company possesses such information or can acquire it without unreasonable expense. In addition, to the extent that any purchaser of Shares has inquiries concerning any of the business or operations of any member of the Company Group, the Company shall use reasonable best efforts to ensure that officers of such members are made available to respond to such inquiries.

(h) Except upon obtaining the prior written consent of Aegis, which consent shall not be unreasonably withheld, the Company shall not, at any time prior to the earlier of the Final Closing or the Termination Date, except as contemplated by the Offering Materials (i) engage in or commit to engage in any transaction outside the ordinary course of business, (ii) issue, agree to issue or set aside for issuance any securities (debt or equity) or any rights to acquire any such securities; provided, however, that the Company shall be permitted to issue stock options and/or restricted stock to officers, advisors, directors and employees of the Company pursuant to its existing equity incentive plan as described in the SEC Reports, (ii) incur, outside of the ordinary course of business, any material indebtedness, (iii) dispose of any material assets, (iv) make any acquisition (except to the extent specifically referenced in the Offering Materials) or (v) change its business or operations.

(i) The Company shall pay all reasonable expenses incurred in connection with the preparation and printing of all necessary offering documents and instruments related to the Offering and the issuance of the Shares and the Agent Warrants and will also pay its own expenses for accounting fees, legal fees and other costs involved with the Offering. All blue sky filings related to this Offering shall be prepared by the Company's counsel, at the Company's expense, with copies of all filings to be promptly forwarded to the Placement Agent. Further, as promptly as practicable after the Final Closing, the Company shall prepare, at its own expense, an electronic "closing binder" relating to the Offering and will distribute one such binder to each of the Placement Agent and its counsel.

(j) With the exception of the AR Facility, until the earlier of the Termination Date or the Final Closing, the Company will not, nor will any person or entity acting on Company's behalf, negotiate with any other placement agent or underwriter with respect to a private or public offering of such entity's debt or equity securities. With the Exception of the AR Facility, neither the Company nor anyone acting on the Company's behalf will, until the earlier of the Termination Date or the Final Closing, without the prior written consent of the Placement Agent, offer for sale to, or solicit offers to subscribe for any securities of the Company from, or otherwise approach or negotiate in respect thereof with, any other person.

5. Placement Agent Further Covenants. The Placement Agent shall not, at any time during the Offering Period, knowingly take any action which would cause any of the representations and warranties made by it in this Agreement not to be complete and correct in all material respects on and as of each Closing Date with the same force and effect as if such representations and warranties had been made on and as of each such date (except to the extent any representation or warranty relates to an earlier date). Offers and sales of the Shares by the Placement Agent will be made in accordance with this Agreement and in compliance with the provisions of Regulation D, Regulation S, if applicable, and the Securities Act.

6. Conditions of Placement Agent's Obligations. The obligations of the Placement Agent hereunder to effect a Closing are subject to the fulfillment, at or before each Closing, of the following additional conditions:

(a) Each of the representations and warranties made in this Agreement by the Company qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Company not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Company shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by the Company at or before the Closing.

(c) Neither the SEC Reports nor the Offering Materials shall, and as of the date of any amendment or supplement thereto will, include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(d) The Company shall have obtained all consents, waivers and approvals required to be obtained by such parties in connection with the consummation of the transactions contemplated hereby.

(e) No order suspending or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to Company's knowledge, threatened.

(f) The Placement Agent shall have received a certificate of an officer of the Company, dated as of the date of such Closing, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a), (b), (c), (d) and (e) above.

(g) Prior to the First Closing, the Company shall have delivered to the Placement Agent: (i) a certified charter document and good standing certificate for the Company and each Subsidiary, each dated as of a date within ten (10) days prior to the First Closing from the secretary of state of its jurisdiction of incorporation or formation, as applicable, and (ii) resolutions of the Company's board of directors approving this Agreement and the transactions and agreements contemplated by this Agreement, certified by the Chief Executive Officer of the Company.

(h) At each Closing, the Company shall pay and/or issue to the Placement Agent the Agent Cash Fee and Agent Expense Allowance earned in such Closing. Promptly following the Final Closing, the Placement Agent shall provide the Company with instructions with respect to the issuance of the Agent Warrants and the Company shall promptly issue said Agent Warrants and deliver same to the Placement Agent.

(i) At each Closing, the Company shall deliver to the Placement Agent a signed opinion of Disclosure Law Group, counsel to the Company, dated as of each such Closing Date, substantially in the form annexed hereto as Exhibit A.

(j) Prior to each Closing, the Company shall provide evidence of the filing of the Certificate of Designation on the Series AAA Preferred Stock with the State of Delaware covering the Shares issued at such Closing.

(k) All proceedings taken at or prior to any Closing in connection with the authorization, issuance and sale of the Shares will be reasonably satisfactory in form and substance to the Placement Agent and its counsel, and such counsel shall have been furnished with all such documents and certificates as it may reasonably request upon reasonable prior notice in connection with the transactions contemplated hereby.

(l) At each Closing, the Company shall provide irrevocable instructions to its transfer agent to issue into treasury shares, and reserve for future and automatic issuance upon the requested conversion of the Shares by any holder, such number of shares of Common Stock issuable upon the conversion of the Shares sold in such Closing.

7. Conditions of Company's Obligations. The obligations of the Company hereunder to effect a Closing are subject to the fulfillment, at or before such Closing, of the following additional conditions or subject to the waiver of such condition or conditions by the Company:

(a) Each of the representations and warranties made in this Agreement by the Placement Agent qualified as to materiality shall be true and correct at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date, and the representations and warranties made by the Placement Agent not qualified as to materiality shall be true and correct in all material respects at all times prior to and on each Closing Date, except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date.

(b) The Placement Agent shall have performed and complied in all material respects with all agreements, covenants and conditions required to be performed and complied with by it at or before the Closing.

(c) The Company shall have received a certificate of an officer of the Placement Agent, dated as of the Closing Date, certifying, as to the fulfillment of the conditions set forth in subparagraphs (a) and (b) above.

(d) No order suspending or enjoining the Offering or sale of the Shares shall have been issued, and no proceedings for that purpose or a similar purpose shall have been initiated or pending, or, to the Company's knowledge, be contemplated or threatened.

8. Indemnification.

(a) The Company will: (i) indemnify and hold harmless the Placement Agent, its officers, directors, partners, employees, agents (including subagents and selected dealers) and each person, if any, who controls the Placement Agent within the meaning of the Section 15 of the Act or Section 20(a) of the Exchange Act (each an "**Indemnitee**") against, and pay or reimburse each Indemnitee for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which will, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys' fees, including appeals), to which any Indemnitee may become subject under the Act or otherwise, in connection with the offer and sale of the Shares, insofar as such losses, claims, damages, liabilities or expenses arise out of or relate to a breach of any representation, warranty or covenant made by the Company herein, regardless of whether such losses, claims, damages, liabilities or expenses shall result from any claim by any Indemnitee or by any third party; and (ii) reimburse each Indemnitee for any legal or other expenses reasonably and actually incurred in connection with investigating or defending against any such loss, claim, action, proceeding or investigation; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such claim, damage or liability is finally judicially determined to have resulted primarily and directly from (A) an untrue statement or alleged untrue statement of a material fact made in the Offering Materials, or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, made solely in reliance upon and in conformity with written information furnished to the Company by the Placement Agent specifically for use in the Offering Materials, (B) any violations by the Placement Agent of the Act, state securities laws or any rules or regulations of FINRA, which does not result from a violation thereof by the Company or any of its affiliates, or (C) the Placement Agent's willful misconduct or gross negligence. In addition to the foregoing agreement to indemnify and reimburse, the Company will indemnify and hold harmless each Indemnitee against any and all losses, claims, damages, liabilities or expenses whatsoever (or actions or proceedings or investigations in respect thereof), joint or several (which shall, for all purposes of this Agreement, include, but not be limited to, all reasonable costs of defense and investigation and all reasonable attorneys' fees, including appeals) to which any Indemnitee may become subject insofar as such costs, expenses, losses, claims, damages or liabilities arise out of or are based upon the claim of any person or entity that he or it is entitled to broker's or finder's fees from any Indemnitee in connection with the Offering, other than fees due to the Placement Agent. The foregoing indemnity agreements will be in addition to any liability the Company may otherwise have.

(b) Aegis will indemnify and hold harmless the Company and its officers, directors, and each person, if any, who controls such entity within the meaning of Section 15 of the Act or Section 20(a) of the Exchange Act against, and pay or reimburse any such person for, any and all losses, claims, damages, liabilities or expenses whatsoever (or actions, proceedings or investigations in respect thereof) to which the Company or any such person may become subject under the Act or otherwise, whether such losses, claims, damages, liabilities or expenses shall result from any claim of the Company or by any third party, but only to the extent that such losses, claims, damages or liabilities are finally judicially determined to have resulted primarily from or as a result of (i) any untrue statement or alleged untrue statement of any material fact contained in the Offering Materials made in reliance upon and in conformity with information contained in the Offering Materials relating to the Placement Agent, or an omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, in either case, if made or omitted in reliance upon and in conformity with written information furnished to the Company by the Placement Agent, specifically for use in the Offering Materials or (ii) any violations by the Placement Agent of the Act or state securities laws which does not result from a violation thereof by the Issuer, the Operating Company or any of their respective affiliates, the Placement Agent's willful misconduct or gross negligence. The Placement Agent will reimburse the Company, and any such person for any legal or other expenses reasonably incurred in connection with investigating or defending against any such loss, claim, damage, liability or action, proceeding or investigation to which such indemnity obligation applies. The foregoing indemnity agreements are in addition to any liability which the Placement Agent may otherwise have. Notwithstanding the foregoing, in no event shall the Placement Agent's indemnification obligation hereunder exceed the aggregate amount of the Agent Cash Fees received by the Placement Agent hereunder.

(c) Promptly after receipt by an indemnified party under this Section 8 of notice of the commencement of any action, claim, proceeding or investigation (the "**Action**"), such indemnified party, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, will notify the indemnifying party of the commencement thereof, but the omission to so notify the indemnifying party will not relieve it from any liability that it may have to any indemnified party under this Section 8 unless the indemnifying party has been substantially prejudiced by such omission. The indemnifying party will be entitled to participate in and, to the extent that it may wish, jointly with any other indemnifying party, to assume the defense thereof subject to the provisions herein stated, with counsel reasonably satisfactory to such indemnified party. The indemnified party will have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel will not be at the expense of the indemnifying party if the indemnifying party has assumed the defense of the Action with counsel reasonably satisfactory to the indemnified party, *provided*, *however*, that if the indemnified party shall be requested by the indemnifying party to participate in the defense thereof or shall have concluded in good faith and specifically notified the indemnifying party either that there may be specific defenses available to it that are different from or additional to those available to the indemnifying party or that such Action involves or could have a material adverse effect upon it with respect to matters beyond the scope of the indemnity agreements contained in this Agreement, then the counsel representing it, to the extent made necessary by such defenses, shall have the right to direct such defenses of such Action on its behalf and in such case the reasonable fees and expenses of such counsel in connection with any such participation or defenses shall be paid by the indemnifying party. No settlement of any Action against an indemnified party will be made without the consent of the indemnifying party and the indemnified party, which consent shall not be unreasonably withheld, delayed or conditioned in light of all factors of importance to such party, and no indemnifying party shall be liable to indemnify any person for any settlement of any such claim effected without such indemnifying party's consent.

9. Contribution. To provide for just and equitable contribution, if: (i) an indemnified party makes a claim for indemnification pursuant to Section 8 hereof and it is finally determined, by a judgment, order or decree not subject to further appeal that such claims for indemnification may not be enforced, even though this Agreement expressly provides for indemnification in such case; or (ii) any indemnified or indemnifying party seeks contribution under the Act, the Exchange Act, or otherwise, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Placement Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Placement Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the Offering (before deducting expenses) received by the Company bear to the total Agent Cash Fees received by the Placement Agent. The relative fault, in the case of an untrue statement, alleged untrue statement, omission or alleged omission will be determined by, among other things, whether such statement, alleged statement, omission or alleged omission relates to information supplied by the Company or by the Placement Agent, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement, alleged statement, omission or alleged omission. The Company and the Placement Agent agree that it would be unjust and inequitable if the respective obligations of the Company and the Placement Agent for contribution were determined by *pro rata* allocation of the aggregate losses, liabilities, claims, damages and expenses or by any other method or allocation that does not reflect the equitable considerations referred to in this Section 9. No person guilty of a fraudulent misrepresentation (within the meaning of Section 10(f) of the Act) will be entitled to contribution from any person who is not guilty of such fraudulent misrepresentation. For purposes of this Section 9, each person, if any, who controls the Placement Agent within the meaning of the Act will have the same rights to contribution as the Placement Agent, and each person, if any, who controls the Company within the meaning of the Act will have the same rights to contribution as the Company, subject in each case to the provisions of this Section 9. Anything in this Section 9 to the contrary notwithstanding, no party will be liable for contribution with respect to the settlement of any claim or action effected without its written consent. This Section 9 is intended to supersede, to the extent permitted by law, any right to contribution under the Act, the Exchange Act or otherwise available.

10. Termination.

(a) The Offering may be terminated by the Placement Agent at any time prior to the expiration of the Offering Period in the event that: (i) any of the representations, warranties or covenants of the Company contained herein or in any of the Offering Materials shall prove to have been false or misleading in any material respect when actually made; (ii) the Company shall have failed to perform any of its material obligations hereunder or under any other Transaction Documents; (iii) there shall occur any event that could reasonably be expected to result in a Company Group Material Adverse Effect or (iv) either party hereto determines that it is reasonably likely that any of the conditions to Closing set forth herein will not, or cannot, be satisfied. In the event of any such termination by the Placement Agent pursuant to the above, the Placement Agent shall be entitled to retain any Agent Compensation already earned (if any, at such point in time) and receive from the Company, within five (5) business days of the Termination Date, in addition to other rights and remedies it may have hereunder, at law or otherwise, an amount equal the sum of upon presentation of a written accounting in reasonable detail, reimbursement of Placement Agent's reasonable and actual out-of-pocket expenses related to the Offering in excess of the foregoing retainer, including but not limited to fees and expenses of its legal counsel (not to exceed $75,000), travel expenses and due diligence related expenditures (collectively, the "**PA Expense Reimbursement**") and the provisions of Sections 3(d) and 3(e) shall survive in full force and effect.

(b) This Offering may be terminated by the Company at any time prior to the expiration of the Offering Period on account of the Placement Agent's fraud, willful misconduct or gross negligence. In the event of any such termination pursuant to this Section 10(b), the Placement Agent shall not be entitled to any further compensation pursuant to these termination provisions.

(c) In the event the Company unilaterally decides for any reason (other than pursuant to Sections 10(b), above) to terminate the Offering at any time prior to the earlier of the First Closing or the Termination Date (the "**Unilateral Termination**"), the Placement Agent shall be entitled to receive from the Company within five (5) business days of such termination the sum of $100,000 plus the PA Expense Reimbursement. In addition, if within twelve (12) months after the Unilateral Termination, the Company conducts a public or private offering of its securities, an amount equal to 1.5% of the gross proceeds from such private or public offering; provided that such percentage shall be the applicable percentages set forth in section 3(d) hereto with respect to any gross proceeds from Tail Investors.

(d) This Offering may be terminated upon mutual agreement of the Company and the Placement Agent, at any time prior to the expiration of the Offering Period. In addition, upon the expiration of the Offering Period, the Offering shall terminate without any further action of the parties hereto. If the Offering is terminated pursuant to this Section 10(d), then in cases in which no Closing had been theretofore consummated, the Company's sole obligation to the Placement Agent shall be the PA Expense Reimbursement which shall be paid within five (5) business days of such termination.

(e) Before any termination by the Placement Agent under Section 10(a) or by the Company under Section 10(b) shall become effective, the terminating party shall give written notice to the other party of its intention to terminate the Offering, which shall set forth the specific grounds for the proposed termination (the "**Termination Notice**"). If the specified grounds for termination, or their resulting adverse effect on the transactions contemplated hereby, are curable, then the other party shall have ten (10) days from the Termination Notice within which to remove such grounds or to eliminate all of their material adverse effects on the transactions contemplated hereby; otherwise, the Offering shall terminate.

(f) Upon any termination pursuant to this Section 10, the parties to this Agreement will promptly instruct Escrow Agent to cause all monies received with respect to the subscriptions for Shares not closed upon to be promptly returned to such subscribers without interest, penalty or deduction.

11. Survival.

(a) The obligations of the parties to pay any costs and expenses hereunder and to provide indemnification and contribution as provided herein shall survive any termination or completion of the Offering. In addition, the provisions of Sections 3(d), 3(e), 3(f), 3(g) and 10 through 17 hereof shall also survive the termination or expiration of this Offering.

(b) The respective indemnities, covenants, representations, warranties and other statements of Company and the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of, and regardless of any access to information by, the Company, the Company or the Placement Agent, or any of their officers or directors or any controlling person thereof, and will survive the sale of the Shares or any termination of the Offering hereunder for a period of two (2) years from the earlier to occur of the Final Closing or the termination of the Offering.

12. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of the date delivered personally, or the date mailed if mailed by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like changes of address which shall be effective upon receipt) or sent by facsimile transmission, with confirmation received or email. If sent to the Placement Agent, such notice will be mailed, delivered or telefaxed and confirmed to Aegis Capital Corp., 1345 Avenue of the Americas, 27th Floor, New York, NY 10105, Attention: Adam K. Stern, telefax number (646) 390-9122 or email Adam@sternaegis.com , with a copy (which shall not constitute notice) to: Littman Krooks LLP, 1325 Avenue of the Americas, 15th Floor, New York, NY 10019 Attention: Steven Uslaner, Esq., telefax number (212) 490-2990 or email: suslaner@littmankrooks.com, if sent to Company, such notice will be mailed, delivered or telefaxed and confirmed to Super League Enterprise. Inc., 2912 Colorado Ave. Suite #203, Santa Monica, CA 90404, Attention: Ann Hand, CEO, email: ann.hand@superleague.com, with a copy (which shall not constitute notice) to: Disclosure Law Group, a professional corporation, 655 W. Broadway, Suite 870, San Diego, CA 92101, Attention: Daniel W. Rumsey, Esq, email: drumsey@disclosurelawgroup.com.

13. Governing Law, Jurisdiction. This Agreement shall be deemed to have been made and delivered in New York City and shall be governed as to validity, interpretation, construction, affect and in all other respects by the internal laws of the State of New York. **THE PARTIES AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE TERMINATION OR VALIDITY HEREOF, ANY ALLEGED BREACH OF THIS AGREEMENT OR THE ENGAGEMENT CONTEMPLATED HEREBY (ANY OF THE FOREGOING, A "CLAIM") SHALL BE SUBMITTED TO THE JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. ("JAMS"), OR ITS SUCCESSOR, IN NEW YORK, FOR FINAL AND BINDING ARBITRATION IN FRONT OF A PANEL OF THREE ARBITRATORS WITH JAMS IN NEW YORK, NEW YORK UNDER THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES (WITH EACH OF THE PLACEMENT AGENT AND THE COMPANY CHOOSING ONE ARBITRATOR, AND THE CHOSEN ARBITRATORS CHOOSING THE THIRD ARBITRATOR). THE ARBITRATORS SHALL, IN THEIR AWARD, ALLOCATE ALL OF THE COSTS OF THE ARBITRATION, INCLUDING THE FEES OF THE ARBITRATORS AND THE REASONABLE ATTORNEYS' FEES OF THE PREVAILING PARTY, AGAINST THE PARTY WHO DID NOT PREVAIL. THE AWARD IN THE ARBITRATION SHALL BE FINAL AND BINDING. THE ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT, 9 U.S.C. SEC. 1-16, AND THE JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED BY ANY COURT HAVING JURISDICTION THEREOF. THE COMPANY AND THE PLACEMENT AGENT AGREE AND CONSENT TO PERSONAL JURISDICTION, SERVICE OF PROCESS AND VENUE IN ANY FEDERAL OR STATE COURT WITHIN THE STATE AND COUNTY OF NEW YORK IN CONNECTION WITH ANY ACTION BROUGHT TO ENFORCE AN AWARD IN ARBITRATION.**

14. Miscellaneous. No provision of this Agreement may be changed or terminated except by a writing signed by the party or parties to be charged therewith. Unless expressly so provided, no party to this Agreement will be liable for the performance of any other party's obligations hereunder. Either party hereto may waive compliance by the other with any of the terms, provisions and conditions set forth herein; *provided*, *however*, that any such waiver shall be in writing specifically setting forth those provisions waived thereby. No such waiver shall be deemed to constitute or imply waiver of any other term, provision or condition of this Agreement. Neither party may assign its rights or obligations under this Agreement to any other person or entity without the prior written consent of the other party.

15. Entire Agreement; Severability. This Agreement together with any other agreement referred to herein supersedes all prior understandings and written or oral agreements between the parties with respect to the Offering and the subject matter hereof. If any portion of this Agreement shall be held invalid or unenforceable, then so far as is reasonable and possible (i) the remainder of this Agreement shall be considered valid and enforceable and (ii) effect shall be given to the intent manifested by the portion held invalid or unenforceable.

16. Limitation of Engagement to the Company. The Company acknowledges that the Placement Agent has been retained only by the Company, that the Placement Agent is providing services hereunder as an independent contractor (and not in any fiduciary or agency capacity) and that the Company's engagement of the Placement Agent is not deemed to be on behalf of, and is not intended to confer rights upon, any shareholder, owner or partner of the Company or any other person not a party hereto as against the Placement Agent or any of its affiliates, or any of its or their officers, directors, controlling persons (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act), employees or agents, other than the indemnification and contribution provisions set forth in Sections 8 and 9 hereof. Unless otherwise expressly agreed in writing by the Placement Agent or as provided in Sections 8 or 9 hereof, no one other than the Company is authorized to rely upon this Agreement or any other statements or conduct of the Placement Agent, and no one other than the Company is intended to be a beneficiary of this Agreement.

17. Modification; Waiver. No provision of this Agreement may be changed or terminated except by a writing signed by the party or parties to be charged therewith. Any party hereto may waive compliance by the other with any of the terms, provisions and conditions set forth herein; provided, however, that any such waiver shall be in writing specifically setting forth those provisions waived thereby. No such waiver shall be deemed to constitute or imply waiver of any other term, provision or condition of this Agreement.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement (and all signatures need not appear on anyone counterpart). Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, for example, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. This Agreement shall become effective when one or more counterparts has been signed and delivered by each of the parties hereto.

[Signatures on following page.]

If the foregoing is in accordance with your understanding of the agreement between the Company and the Placement Agent, kindly sign and return this Agreement, whereupon it will become a binding agreement between the Company and the Placement Agent in accordance with its terms.

SUPER LEAGUE ENTERPRISE, INC.

By: /s/ *Ann Hand*
Ann Hand
Chief Executive Officer

Accepted and agreed to this
6th day of November, 2023:

AEGIS CAPITAL CORP.

By: /s/ *Adam Stern*
Adam K. Stern
Head of Private Equity Banking

SCHEDULE OF EXCEPTIONS

Schedule 2(c): Subsidiaries

[OMITTED]

Schedule 2(k): Capitalization

[OMITTED]

EXHIBIT A

FORM OF LEGAL OPINION

[OMITTED]