

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): August 15, 2025

WORKHORSE GROUP INC.
(Exact name of registrant as specified in its charter)

Nevada
(State or Other Jurisdiction
of Incorporation)

001-37673
(Commission File Number)

26-1394771
(IRS Employer
Identification Number)

3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241
(Address of principal executive offices) (zip code)

1 (888) 646-5205
(Registrant's telephone number, including area code)

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

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

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, \$0.001 par value per share	WKHS	The Nasdaq Capital Market

Item 1.01. Entry into a Material Definitive Agreement.

Merger Agreement

On August 15, 2025, Workhorse Group Inc., a Nevada corporation (“Workhorse”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) by and among Workhorse, Omaha Intermediate 2, Inc., a Delaware corporation and wholly-owned subsidiary of Workhorse (“Intermediate Parent”), Omaha Intermediate, Inc., a Delaware corporation and wholly-owned subsidiary of Intermediate Parent (“Intermediate”), Omaha Merger Subsidiary, Inc., a Delaware corporation and wholly-owned subsidiary of Intermediate (“Merger Subsidiary”), and Motiv Power Systems, Inc., a Delaware of corporation (“Motiv”), pursuant to which, and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement, Merger Subsidiary will merge with and into Motiv (the “Merger”). Upon consummation of the Merger, Merger Sub will cease to exist and Motiv will become a direct, wholly-owned subsidiary of Intermediate and an indirect, wholly-owned subsidiary of Workhorse.

Merger Consideration. Subject to the terms and conditions of the Merger Agreement, at the effective time of the Merger (the “Effective Time”), Motiv’s investors will receive a number of shares of Workhorse’s common stock, par value \$0.001 per share (“Workhorse Common Stock”), calculated in accordance with the Merger Agreement (the “Merger Consideration”). Upon closing of the Merger (the “Closing”), all of the issued and outstanding shares of Motiv’s common stock and preferred stock will be cancelled, and Workhorse will be the ultimate indirect parent of 100% of Motiv. In addition, all of the financial indebtedness of Motiv will be cancelled with the holders of such indebtedness receiving Workhorse Common Stock as Merger Consideration.

Upon the Closing and issuance of the Merger Consideration, on a pro forma basis and based upon the number of shares of Workhorse Common Stock expected to be issued in the Merger, pre-Merger Motiv investors will initially own approximately 62.5%, Workhorse stockholders as of immediately prior to Closing will own approximately 26.5%, and the 2024 Note Holder (as defined below) will own Rights (as defined below) to receive Workhorse Common Stock representing approximately 11% of Workhorse, in all cases, on a fully-diluted basis prior to giving effect to (i) the Equity Financing (as defined in the Merger Agreement), and (ii) the Convertible Financing (as defined in the Merger Agreement). Under certain circumstances further described in the Merger Agreement, the ownership percentages may be adjusted.

Listing. The parties intend that the combined company will remain listed on the Nasdaq Capital Market (“Nasdaq”). Pursuant to Nasdaq rules, Workhorse will make an appropriate listing application to maintain such listing in connection with the Merger Agreement.

Registration Rights. The shares of Workhorse Common Stock issued as consideration for the Merger will be issued to the investors of Motiv in a transaction exempt from registration under the Securities Act of 1933, as amended (the “Securities Act”), under Section 4(a)(2) thereunder. Workhorse has agreed to enter into a customary Registration Rights Agreement (the “Registration Rights Agreement”) with the Motiv investors receiving Workhorse Common Stock in the Merger.

Financings. The Merger Agreement includes a condition to closing that entities affiliated with Motiv’s largest investor (the “Motiv Investor”) provide Workhorse with up to \$20 million in debt financing (the “Closing Debt Financing”) at the Closing. Under the Closing Debt Financing, approximately \$10 million is to be made available after the Closing for general corporate purposes pursuant to a revolving credit facility, and \$10 million is to be made available after the Closing to fund vehicle manufacturing upon the receipt of confirmed purchase orders pursuant to an ABL facility. The terms of the Closing Debt Financing have not been finalized, but the parties expect that it will contain customary terms, conditions, including borrowing conditions, and covenants for similar transactions. The Closing Debt Financing will be guaranteed by Workhorse’s subsidiaries and secured by substantially all non-real estate assets of Workhorse and its subsidiaries. In addition, Workhorse and Motiv have agreed to use their commercially reasonable efforts to effect an equity financing for Workhorse on terms mutually acceptable to the parties (the “Equity Financing”).

Treatment of Workhorse Equity Awards. At the Effective Time, all unexercised and outstanding Workhorse stock options issued under Workhorse’s equity incentive plans will be cancelled for no consideration. All other unvested and outstanding awards under Workhorse’s equity incentive plans will accelerate in full as of the Effective Time.

Governance Matters. The Merger Agreement further includes a condition that at the Effective Time, the Board of Directors of Workhorse (the “Workhorse Board”) will consist of seven members, five of whom will be designated by Motiv and two of whom will be designated by Workhorse. Also at the Effective Time, the parties expect to adopt an amendment to Workhorse’s Articles of Incorporation in a form mutually agreeable to the parties, including to effect a reverse split of the Workhorse Common Stock to comply with the listing standards of Nasdaq, including, if necessary to comply with Nasdaq Listing Rule 5505.

Termination of the Merger Agreement. The Merger Agreement contains certain termination rights of each of Workhorse and Motiv. Upon termination of the Merger Agreement under specified circumstances, Workhorse may be required to pay Motiv a termination fee of \$1,050,000, and in certain other circumstances, Motiv may be required to pay Workhorse a termination fee of \$1,750,000.

Representations, Warranties, and Covenants. Each of Workhorse and Motiv has agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, covenants relating to (i) obtaining the requisite approval of their respective stockholders, (ii) non-solicitation of alternative acquisition proposals, (iii) the conduct of their respective businesses during the period between the date of signing the Merger Agreement and the Closing, (iv) Workhorse filing a Preliminary Proxy Statement with the Securities and Exchange Commission (the “SEC”) and, upon completion of SEC review, filing a Definitive Proxy Statement with the SEC and mailing it to Workhorse Stockholders, and (v) Workhorse applying to have the combined company after Closing be listed on Nasdaq in connection with the change of control transaction.

Closing Conditions. Consummation of the Merger is subject to certain closing conditions, including, among other things, (i) approval by Workhorse stockholders of the proposals described below, (ii) approval by the requisite Motiv stockholders of the adoption and approval of the Merger Agreement and the transactions contemplated thereby, (iii) the repayment and cancellation of all outstanding Workhorse indebtedness (other than the Convertible Note (as defined below) and the Closing Debt Financing), (iv) Nasdaq’s approval of the listing of the shares of Workhorse Common Stock to be issued in connection with the Merger, (v) the Workhorse Board consisting of seven members, five of whom are designated by Motiv and two of whom are designated by Workhorse, (vi) the performance of the Repayment Agreement (as defined below), (vii) the parties’ entry into the Closing Debt Financing, and (viii) performance of the Sale Leaseback (as defined below). Each party’s obligation to consummate the Merger is also subject to other specified customary conditions, including regarding the accuracy of the representations and warranties of the other party, subject to the applicable materiality standard, and the performance in all material respects by the other party of its obligations under the Merger Agreement required to be performed on or prior to the date of the Closing.

Stockholder Approval. In connection with the Merger, Workhorse will seek the approval of its stockholders to, among other things, (i) issue the shares of Workhorse Common Stock issuable in connection with the Merger pursuant to the rules of Nasdaq, including Nasdaq Listing Rule 5635, (ii) adopt an amendment to Workhorse’s 2023 Long-Term Incentive Plan to increase the number of shares authorized for issuance thereunder to an amount mutually agreed by Workhorse and Motiv, (iii) adopt an amendment to Workhorse’s Articles of Incorporation in the form mutually agreeable to Workhorse and Motiv, and (iv) grant authority to Workhorse’s Board of Directors to effect a reverse stock split to comply with Nasdaq’s initial listing standards applicable to the transaction. The requisite stockholders of Motiv have voted in favor of the adoption and approval of the Merger Agreement and the transactions contemplated thereby.

Sale Leaseback

On August 15, 2025, in connection with the sale and leaseback transaction described herein (the “Sale Leaseback”), a subsidiary of Workhorse, Workhorse Motor Works Inc, entered into a Purchase and Sale Agreement (the “Purchase and Sale Agreement”) with an affiliate of the Motiv Investor (the “Property Purchaser”) for the sale of its Union City, Indiana manufacturing facility and campus (the “Property”), excluding any equipment and any fixtures solely used in the production of vehicles, to the Property Purchaser for a purchase price, before fees and expenses, of \$20 million. The Sale Leaseback is expected to close on August 15, 2025. Workhorse plans to use the proceeds for the Repayment (as defined below), to pay transaction expenses, and for general corporate purposes.

Pursuant to the Purchase and Sale Agreement, Workhorse and the Property Purchaser will enter into a Lease at closing (the “Lease”), pursuant to which Workhorse agrees to lease the Property from the Property Purchaser for an initial term of 20 years. Workhorse will have the option to renew the Lease for six additional 5-year renewal terms, subject to the terms of the Lease.

Under the Lease, base annual rent will be abated for the first six months of the Lease term. If Workhorse is in default during the initial term of Lease, then the abated rent amount will become immediately due and payable. During this abatement period, Workhorse will be responsible for all other costs and expenses relating to the Property as enumerated below in this paragraph, in accordance with the Lease. After the conclusion of the six-month abatement period, Workhorse will pay base annual rent of \$2,100,000 for the Property, subject to an annual increase of 3% during the initial term of the Lease and certain additional increases during any renewal term. In addition to rent, Workhorse will be responsible for all costs and expenses related to the Property, including, without limitation, all costs and expenses for maintenance, operation, repair and replacement of buildings and improvements, utility charges, insurance premiums and real estate taxes and assessments; provided, that Workhorse is not obligated to make any capital replacements or repairs during the last year of the lease term.

Adjacent to the Property is a warehouse building (the “Adjacent Warehouse”) which Workhorse currently leases from Indiana Avenue Holdings, LLC (“Indiana Holdings”) pursuant to a lease agreement (the “Existing Warehouse Lease”). The Adjacent Warehouse is used in connection with Workhorse’s operations. Workhorse covenants to keep the Existing Warehouse Lease (as it may be amended or extended) in effect and to obtain Property Purchaser’s consent to certain actions relating to the Existing Warehouse Lease, such as an amendment or termination of the Existing Warehouse Lease or a waiver of any material rights under the Existing Warehouse Lease. As of the effective date of the Lease, Workhorse is negotiating a new long-term lease with Indiana Holdings (the “New Warehouse Lease”), which is intended to amend and replace the Existing Warehouse Lease. Per the Lease, Workhorse has covenanted to use commercially reasonable efforts to negotiate the inclusion of additional protections for the Property Purchaser in connection with the New Warehouse Lease, including the Property Purchaser’s rights to cure a default on behalf of Workhorse and take an assignment of the New Warehouse Lease in the event of Workhorse’s default under the same.

Convertible Financing

On August 15, 2025, Workhorse issued to an affiliate of the Motiv Investor (the “Convertible Note Holder”) a Subordinated Secured Convertible Note (the “Convertible Note”) with an aggregate original principal amount of \$5 million (the “Convertible Financing”). The Convertible Note was issued without original issue discount, and Workhorse received \$5 million in proceeds, prior to fees and expenses, which Workhorse plans to use for the Repayment and other general corporate purposes. The Convertible Note bears interest at a rate of 8% per annum, subject to adjustment as set forth in the Convertible Note, compounded quarterly and increasing the principal outstanding under the Convertible Note. The Convertible Note is a secured obligation of the Workhorse, ranking junior to the 2024 Notes (as defined below) and senior to all other indebtedness and, subject to certain limitations, is unconditionally guaranteed by each of Workhorse’s subsidiaries, pursuant to the terms of a certain Subsidiary Guarantee (the “Subsidiary Guarantee”) and secured by substantially all of the assets of Workhorse and its subsidiaries pursuant to a certain Security Agreement (the “Security Agreement”).

Workhorse’s obligations under the Convertible Note mature on the earliest of (i) the date a termination fee is due to Motiv under the Merger Agreement, (ii) the date that is three months following the termination of the Merger Agreement pursuant to certain provisions of the Merger Agreement, and (iii) the date that is 24 months after the date of issuance. Following the Closing of the Merger, the Convertible Note will be automatically convertible into a number shares of Workhorse stock equal to the principal amount then outstanding divided by 90% of the price per share paid by investors in the Equity Financing.

The Convertible Note contains certain events of default, including the failure by Workhorse to comply with the Merger Agreement and certain related agreements, as well as other customary events of default described therein. Upon the occurrence of an event of default under the Convertible Note, Workhorse’s obligations would be accelerated and become immediately due and payable.

Pursuant to the Convertible Note, Workhorse has agreed to expand the Workhorse Board to eight members and to appoint a nominee designated by the Convertible Note Holder to fill the newly-created vacancy. As described further below, Alan Henricks has been appointed to the Workhorse Board in satisfaction of such obligation. In addition, the Convertible Note Holder was granted the right to appoint one observer to the Workhorse Board.

Waiver, Repayment and Exchange Agreement

On August 15, 2025, Workhorse entered into Waiver, Repayment and Exchange Agreements (each, a “Repayment Agreement” and collectively, the “Repayment Agreements”) by and among Workhorse and the investors party thereto (collectively, the “2024 Note Holder”).

Upon entry into the Repayment Agreements, Workhorse deposited approximately \$9.9 million (the “Cash Collateral”) into the previously disclosed Lockbox Account (the “Lockbox”), with such Cash Collateral to be released to the 2024 Note Holder in connection with the Closing. The Cash Collateral will bear interest at a rate equal to 5% per annum. The amount of Cash Collateral released to the 2024 Note Holder in connection with the Closing will be reduced by the aggregate principal amount of 2024 Notes converted before the Closing and increased by the amount of interest accrued on the Cash Collateral before the Closing. In connection with the Closing, Workhorse will redeem all of its then outstanding obligations under the 2024 Notes, which as of the date hereof is approximately \$30.9 million, at 100% of the face amount, plus accrued interest (the “Repayment”). Upon making such Repayment, Workhorse shall have no outstanding obligations under the 2024 Notes.

In addition, Workhorse will issue the 2024 Note Holder rights (the “Rights”) to acquire shares of Workhorse Common Stock in exchange (the “Warrant Exchange”) for the cancellation of all of the Warrants issued to the 2024 Note Holder. The Warrant Exchange would be for a number of Rights exercisable for shares of Workhorse Common Stock equal to 30% of fully diluted shares of Workhorse Common Stock then outstanding immediately prior to the Closing (and prior to the issuance of the Merger Consideration). The Warrant Exchange will occur on the Closing Date, after which there will no longer be any outstanding 2024 Warrants or 2024 Notes. The Rights are exercisable at the discretion of the holder at any time to the extent the number of shares of Workhorse Common Stock held by the holder does not exceed 9.99% of the then outstanding shares of Workhorse Common Stock.

In addition, the Repayment Agreement amended certain provisions of the Securities Purchase Agreement, by and among Workhorse and the 2024 Note Holder (the “2024 Securities Purchase Agreement”). The 2024 Note Holder also waived its right to effect and agreed not to request any Additional Closing (as defined in the 2024 Securities Purchase Agreement), effective as of the date of Closing or the abandonment of the Merger. The 2024 Note Holder also consented to the issuance of the Convertible Note, including the Security Agreement and the Subsidiary Guarantee, the Sale Leaseback, and the Merger and related transactions.

The foregoing summaries of the Merger Agreement, the Purchase and Sale Agreement, the Convertible Note, the Security Agreement, the Subsidiary Guarantee, and the Repayment Agreement, are qualified in their entirety by reference to the full text of the Merger Agreement, the Purchase and Sale Agreement, the Convertible Note, the Security Agreement, the Subsidiary Guarantee, and the form of Repayment Agreement, which are filed as Exhibits 2.1, 10.1, 10.2, 10.3, 10.4, and 10.5, respectively, to this Current Report on Form 8-K and which are incorporated herein by reference.

Each of the foregoing contains provisions, including representations and warranties of the parties, that are intended only for the purpose of such applicable transaction, including allocating risk between them. These representations and warranties speak only as of a specific date, are subject to transaction-specific, negotiated limitations, qualifications and standards of materiality and do not purport to be factually accurate statements about the matters they address. Accordingly, investors should not rely on such representations and warranties and other provisions as statements of fact about Workhorse or any other person.

Item 2.01. Completion of Acquisition or Disposition of Assets.

To the extent required by this Item 2.01, the information related to the Sale Leaseback set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02. Unregistered Sales of Equity Securities.

To the extent required by this Item 3.02, the information related to the Merger Agreement (including the Merger), the Sale Leaseback, the Convertible Financing, and the Repayment Agreement (including the Warrant Exchange) set forth in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

The shares of Workhorse Common Stock issued as consideration in the Merger will be issued in a transaction exempt from registration under the Securities Act under Section 4(a)(2) thereunder because the offer and sale of such securities will not involve a public offering.

The Convertible Note issued in connection with the Convertible Financing was issued in a transaction exempt from registration under the Securities Act under Section 4(a)(2) thereunder because the offer and sale of such security did not involve a public offering.

The shares of Workhorse Common Stock issued as consideration in the Warrant Exchange will be issued in a transaction exempt from registration under the Securities Act under Section 4(a)(2) and Rule 144(d)(3)(ii) thereunder because the offer and sale of such securities will not involve a public offering and because the securities acquired by the 2024 Note Holder were exchanged for securities of the same issuer.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Change of Control Agreement Amendments

On August 15, 2025, Richard Dauch, Chief Executive Officer of Workhorse, Robert Ginnan, Chief Financial Officer of Workhorse, and James D. Harrington, General Counsel, Chief Compliance Officer and Secretary of Workhorse (the “Executives”), entered into amendments (the “Change of Control Amendments”) to their Employment Agreements (the “Employment Agreements”) to reduce the amounts payable in connection with a Change of Control (as defined in the Employment Agreements). Following the entry into the Change of Control Amendments, upon a Termination Upon Change of Control (as defined in the Employment Agreements), the Executives would be entitled to receive (i) one year of their base salary, which shall be paid in cash as follows: (x) if the Termination Upon Change of Control occurs prior to the earlier of the consummation of the Equity Financing and June 30, 2026, one-third of such payment shall be paid in connection with occurrence of such Termination Upon Change of Control, and the remaining amount upon paid upon the earlier of (1) the consummation of the Equity Financing and (2) June 30, 2026; or (y) if the Termination Upon Change of Control occurs after the earlier of the consummation of the Equity Financing and June 30, 2026, such payment shall be paid in connection with occurrence of such Termination Upon Change of Control. Each of the Executives also would be entitled to receive one year of COBRA payments. In addition, the Executives have agreed to terminate their employment with Workhorse upon the Closing of the Merger or such later date as reasonably required for such Executives to successfully transition their duties.

280G Cutback Amendments

On August 15, 2025, the Executives entered into amendments to their Employment Agreements (the “280G Cutback Amendments”) pursuant to which each Executive agreed to reduce the amount of any payments received upon a Change of Control in an amount to avoid an excise tax obligation under Rule 280G of the Internal Revenue Code of 1986, as amended.

Director Appointment

Effective August 18, 2025, the Workhorse Board, acting on the recommendation of its Nominating and Corporate Governance Committee, appointed Alan Henricks as the newest member of the Workhorse Board. Mr. Henricks will serve as a director on the Workhorse Board and as a member of its Audit Committee. Mr. Henricks will receive compensation payable to non-employee directors serving on the Workhorse Board, consistent with the policies summarized under the caption “Non-Employee Director Compensation” under Workhorse’s annual proxy statements and Annual Reports on Form 10-K. Mr. Henricks was appointed pursuant to the Convertible Financing, as described in Item 1.01 of this Current Report on Form 8-K. Except as described herein, there are no arrangements or understandings between Mr. Henricks and any other person pursuant to which he was selected to serve as a director. There are no transactions in which Mr. Henricks has an interest requiring disclosure under Item 404(a) of Regulation S-K. Each of Workhorse’s directors serves until the election of a successor, removal or resignation. Mr. Henricks is expected to recuse himself from Board meetings related to the Merger, the Convertible Financing, the Repayment and Warrant Exchange, and other customary matters when a conflict arises.

Item 7.01. Regulation FD Disclosure.

On August 15, 2025, Workhorse and Motiv issued a joint press release (the “Joint Press Release”) about the transactions described in this Current Report on Form 8-K. The Joint Press Release is furnished as Exhibit 99.1 and incorporated by reference herein.

The information furnished pursuant to this Item 7.01, including Exhibit 99.1 hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference into any filing under the Exchange Act or the Securities Act, except as expressly set forth by specific reference in such a filing.

Additional Information and Where to Find It

Workhorse intends to file with the SEC a Proxy Statement on Schedule 14A (the “Proxy Statement”). Workhorse may also file other relevant documents with the SEC regarding the transactions described herein. This document is not a substitute for the Proxy Statement or any other document that Workhorse may file with the SEC. Any Definitive Proxy Statement (if and when available) will be mailed to stockholders of Workhorse. STOCKHOLDERS OF WORKHORSE ARE URGED TO READ THE PROXY STATEMENT AND ANY OTHER DOCUMENTS FILED OR TO BE FILED WITH THE SEC IN CONNECTION WITH THE TRANSACTIONS DESCRIBED HEREIN, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE, AS THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT WORKHORSE, THE TRANSACTIONS DESCRIBED HEREIN, AND RELATED MATTERS. Stockholders will be able to obtain a free copy of the Proxy Statement (if and when available) and other relevant documents once such documents are filed with the SEC from the SEC’s website at www.sec.gov, or by directing a request by mail to Workhorse Group Inc., 3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241, or from the Workhorse’s website at www.ir.workhorse.com.

Participants in the Solicitation

Workhorse and certain of its directors and officers may, under the rules of the SEC, be deemed to be “participants” in the solicitation of proxies from its stockholders that will occur in connection with the meeting at which the transactions described herein may be presented to stockholders for approval (the “Meeting”). Information concerning the interests of the persons who may be considered “participants” in the solicitation is set forth in Workhorse’s proxy statements and its Annual Reports on Form 10-K previously filed with the SEC, and will be set forth in the Proxy Statement relating to the Meeting if and when the Proxy Statement becomes available. Copies of these documents can be obtained, without charge, at the SEC’s website at www.sec.gov, or by directing a request to Workhorse at the address above, or at www.ir.workhorse.com.

Cautionary Note Regarding Forward-Looking Statements

This Current Report on Form 8-K contains “forward-looking statements” within the meaning of Section 21E of the Exchange Act, and the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact included or incorporated by reference in this Current Report on Form 8-K, including, among other things, statements regarding the proposed Merger and other transactions described herein, future events, plans and anticipated results of operations, business strategies, the anticipated benefits of the proposed transactions, the anticipated impact of the proposed transaction on the combined company’s business and future financial and operating results, the expected amount and timing of synergies from the proposed transaction, the anticipated closing date for the proposed transaction and other aspects of either company’s operations or operating results are forward-looking statements. Some of these statements may be identified by the use of the words “plans”, “expects” or “does not expect”, “estimated”, “is expected”, “budget”, “scheduled”, “estimates”, “forecasts”, “intends”, “anticipates” or “does not anticipate”, “targets”, “projects”, “contemplates”, “predicts”, “potential”, “continue”, or “believes”, or variations of such words and phrases or state that certain actions, events or results “may”, “could”, “would”, “should”, “might”, “will” or “will be taken”, “occur” or “be achieved”.

Forward-looking statements are based on the opinions and estimates of management of Workhorse as of the date such statements are made, and they are subject to known and unknown risks, uncertainties, assumptions and other factors that may cause the actual results, level of activity, performance or achievements to be materially different from those expressed or implied by such forward-looking statements. These risks and uncertainties could give rise to a delay in or the failure to consummate the Merger or the other transactions described herein (collectively, the “Transactions”). Some factors that could cause actual results to differ include the outcome of continuing discussions between the Workhorse and Motiv with respect to the Transactions, including the possibility that the parties may terminate certain of the Transactions or that the terms of certain of the Transactions may change; our ability to consummate the Transactions or achieve the expected synergies and/or efficiencies; potential regulatory delays; the industry and market reaction to this announcement; the effect of the announcement of the Transactions on the ability of the parties to operate their businesses and retain and hire key personnel and to maintain favorable business relationships; the possibility that the integration of the parties may be more difficult, time-consuming or costly than expected or that operating costs and business disruptions may be greater than expected; the ability to obtain regulatory and other approvals required to consummate the Transactions, including from Nasdaq; the risk that the price of our securities may be volatile due to a variety of factors; changes in laws, regulations, technologies, the global supply chain, and macro-economic and social environments affecting our business; and our ability to maintain compliance with Nasdaq rules and otherwise maintain our listing of securities on Nasdaq.

Additional information on these and other factors that may cause actual results and Workhorse's performance to differ materially is included in Workhorse's periodic reports filed with the SEC, including, but not limited to, Workhorse's Annual Report on Form 10-K for the year ended December 31, 2024, including those factors described under the heading "*Risk Factors*" therein, and Workhorse's subsequent Quarterly Reports on Form 10-Q. Copies of Workhorse's filings with the SEC are available publicly on the SEC's website at www.sec.gov or may be obtained by contacting Workhorse. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Readers are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made. These forward-looking statements are made only as of the date hereof, and Workhorse undertakes no obligations to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

No Offer or Solicitation

This Current Report on Form 8-K does not constitute a solicitation of a vote or a proxy, consent or authorization with respect to any securities. This Current Report on Form 8-K also does not constitute an offer to sell or the solicitation of an offer to buy any securities, nor will there be any sale of securities in any states or jurisdictions in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction. No offering of securities will be made except by means of a prospectus meeting the requirements of the Securities Act, or an exemption therefrom.

Item 9.01. Exhibits.

Exhibit No.	Description
2.1*	<u>Agreement and Plan of Merger, dated August 15, 2025, by and among Workhorse Group Inc., Omaha Intermediate 2, Inc., Omaha Intermediate, Inc., Omaha Merger Subsidiary, Inc., and Motiv Power Systems, Inc.</u>
10.1	<u>Subordinated Secured Convertible Note, dated August 15, 2025.</u>
10.2*	<u>Security Agreement, dated August 15, 2025, among the Grantors and Collateral Agent party thereto.</u>
10.3*	<u>Subsidiary Guarantee, dated August 15, 2025, among Motive GM Holdings II LLC and the Grantors and Agent party thereto.</u>
10.4*	<u>Purchase and Sale Agreement, dated August 15, 2025, by and between Workhorse Motorworks Inc. and Mango Workhorse LLC.</u>
10.5*	<u>Form of Waiver, Repayment and Exchange Agreement, dated August 15, 2025, by and between Workhorse Group Inc. and the investors party thereto.</u>
99.1	<u>Joint Press Release, dated August, 15, 2025.</u>
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL.

* Certain schedules and exhibits to this Exhibit have been omitted in accordance with Item 601 of Regulation S-K.

SIGNATURES

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

WORKHORSE GROUP INC.

Date: August 15, 2025

By: /s/ James D. Harrington

Name: James D. Harrington

Title: General Counsel, Chief Compliance Officer and
Secretary

AGREEMENT AND PLAN OF MERGER

by and among

WORKHORSE GROUP INC.,

OMAHA INTERMEDIATE 2, INC.,

OMAHA INTERMEDIATE, INC.,

OMAHA MERGER SUBSIDIARY, INC.

and

MOTIV POWER SYSTEMS, INC.

Dated as of August 15, 2025

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Exhibit A – FIRPTA Certificate

Exhibit B – Form of Company Support Agreement

Exhibit C – Form of Parachute Payment Cutback Agreement

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this “**Agreement**”), dated as of August 15, 2025, by and among Workhorse Group Inc., a Nevada corporation (“**Parent**”), Omaha Intermediate 2, Inc., a Delaware corporation (“**Intermediate Parent**”), Omaha Intermediate, Inc., a Delaware corporation (“**Intermediate**”), Omaha Merger Subsidiary, Inc., a Delaware corporation (“**Merger Sub**”), and Motiv Power Systems, Inc., a Delaware corporation (the “**Company**”).

RECITALS

WHEREAS, Parent and the Company intend to effect a merger of Merger Sub with and into the Company (the “**Merger**”) in accordance with this Agreement and the General Corporation Law of the State of Delaware (the “**DGCL**”). Upon consummation of the Merger, Merger Sub will cease to exist and the Company will become a direct, wholly-owned subsidiary of Intermediate and an indirect, wholly-owned subsidiary of Parent;

WHEREAS, the Board of Directors of the Company (the “**Company Board**”) has (i) determined that the transactions contemplated hereby are fair to, advisable and in the best interests of the Company and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of the Company vote to adopt this Agreement and thereby approve the transactions contemplated hereby;

WHEREAS, the Company Board has approved this Agreement and the Merger, with the Company continuing as the Surviving Company (as defined below), after the Effective Time (as defined below), pursuant to which each share of Company Capital Stock shall be converted into the right to receive a number of shares of common stock, par value \$0.001 per share, of Parent (the “**Parent Common Stock**”) equal to its applicable portion, if any, of the Capital Stock Merger Consideration, upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, Intermediate Parent is a newly incorporated Delaware corporation that is wholly-owned by Parent, Intermediate is a newly incorporated Delaware corporation that is wholly-owned by Intermediate Parent and Merger Sub is a newly incorporated Delaware corporation that is wholly-owned by Intermediate that has been formed for the sole purpose of effecting the Merger;

WHEREAS, effective as of the Closing, the certificate of incorporation of Parent shall be amended in a form to be mutually agreed to by Parent and the Company (the “**Parent Charter Amendment**”);

WHEREAS, the Board of Directors of Parent (the “**Parent Board**”) has (i) determined that the transactions contemplated hereby are fair to, advisable and in the best interests of Parent and its stockholders, (ii) approved and declared advisable this Agreement and the transactions contemplated hereby, including the issuance of shares of Parent Common Stock to the debtholder(s) and stockholders of the Company pursuant to this Agreement, (iii) determined and declared that the Charter Amendment Proposal is advisable and in the best interests of Parent and its stockholders, (iv) determined and declared that the Reverse Stock Split Proposal is advisable and in the best interests of Parent and its stockholders, (v) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Parent vote to authorize the issuance of the Parent Common Stock in accordance with Nasdaq Listing Rule 5635 (the “**Nasdaq Issuance Proposal**”), (vi) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholders of Parent vote to authorize the increase in the total authorized shares for issuance under the Parent 2023 Long-Term Incentive Plan to an amount that is mutually agreed by Parent and the Company (the “**Equity Plan Proposal**”), (vii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, as promptly as practicable after the form thereof is mutually agreed to by Parent and the Company, that the stockholders of Parent vote to approve an amendment to Parent’s articles of incorporation in the form of the Parent Charter Amendment (the “**Charter Amendment Proposal**”), and (viii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, as promptly as practicable after the terms thereof are mutually agreed by Parent and the Company, that the stockholders of Parent vote to approve the Reverse Stock Split (the “**Reverse Stock Split Proposal**”);

WHEREAS, the board of directors of each of Intermediate Parent, Intermediate and Merger Sub has (i) determined that the transactions contemplated hereby are fair to, advisable and in the best interests of Merger Sub and its sole stockholder (Intermediate), Intermediate and its sole stockholder (Intermediate Parent) and Intermediate Parent and its sole stockholder (Parent), (ii) approved and declared advisable this Agreement and the transactions contemplated hereby and (iii) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that each of Parent, as the stockholder of Intermediate Parent, Intermediate Parent, as the stockholder of Intermediate, and Intermediate, as the stockholder of Merger Sub, votes to adopt this Agreement and thereby approve the transactions contemplated hereby;

WHEREAS, Parent, Intermediate Parent, Intermediate, Merger Sub and the Company each desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe certain conditions to the Merger as specified herein;

WHEREAS, concurrently with and as a condition to the execution and delivery of this Agreement, Parent, Workhorse Motor Works Inc (***“Parent Property Sub”***) and Mango Workhorse LLC have executed a sale and leaseback transaction (the ***“Sale and Leaseback Transaction”***), pursuant to which Parent Property Sub sold its Union City, Indiana manufacturing facility and campus (the ***“Property”***) to Mango Workhorse LLC, and Parent subsequently leased back the Property from Mango Workhorse LLC;

WHEREAS, concurrently with and as a condition to the execution and delivery of this Agreement, Parent used certain of the proceeds from the Sale and Leaseback Transaction to repurchase and retire certain then-outstanding indebtedness and warrants of Parent from the holders thereof (collectively, the ***“Parent Lenders”***) pursuant to those refinancing agreements by and between Parent and the Parent Lenders of even date herewith (the ***“Parent Refinancing Agreements”***);

WHEREAS, concurrently with the execution and delivery of this Agreement, Parent and Motive GM Holdings II LLC have executed a convertible note in Parent (the ***“Convertible Financing”***);

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement of Parent's willingness to enter into this Agreement, the stockholders of the Company listed on Section A of the Company Disclosure Letter have entered into the Company Support Agreement, dated as of the date of this Agreement, in the form attached hereto as Exhibit B (the "**Company Support Agreement**"), pursuant to which such stockholders have, subject to the terms and conditions set forth therein, agreed to vote all of their respective shares of Company Capital Stock in favor of the adoption of this Agreement and thereby approve the transactions contemplated hereby; and

WHEREAS, it is expected that concurrently with the execution and delivery of this Agreement, the stockholders of the Company will execute an action by written consent by the holders of (i) at least a majority of the voting power of outstanding shares of Company Capital Stock, and (ii) at least a majority of the outstanding shares of Company Preferred Stock, approving and adopting this Agreement (collectively, subclauses (i) and (ii), the "**Company Stockholder Approval**").

AGREEMENT

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Intermediate Parent, Intermediate, Merger Sub and the Company hereby agree as follows:

ARTICLE I DEFINITIONS & INTERPRETATIONS

Section 1.1 Certain Definitions. For purposes of this Agreement:

(a) "**Acceptable Confidentiality Agreement**" means a confidentiality agreement containing terms not materially less restrictive in the aggregate to the counterparty thereto than the terms of the Confidentiality Agreement, except such confidentiality agreement need not contain any standstill, non-solicitation or no hire provisions. Notwithstanding the foregoing, a Person who has previously entered into a confidentiality agreement with Parent relating to a potential Acquisition Proposal on terms that are not materially less restrictive than the Confidentiality Agreement with respect to the scope of coverage and restrictions on disclosure and use shall not be required to enter into a new or revised confidentiality agreement, and such existing confidentiality agreement shall be deemed to be an Acceptable Confidentiality Agreement.

(b) "**Acquisition Inquiry**" means, with respect to a party, an inquiry, indication of interest or request for information (other than an inquiry, indication of interest or request for information made or submitted by the Company, on the one hand, or Parent, on the other hand, to the other party) that could reasonably be expected to lead to an Acquisition Proposal.

(c) "**Acquisition Proposal**" means, with respect to either Parent or the Company, any proposal or offer from any Person (other than Parent or the Company, as applicable, or their respective Representatives) providing for an Acquisition Transaction.

(d) “**Acquisition Transaction**” means any transaction or series of related transactions (other than the Convertible Financing) involving:

(i) any merger, consolidation, amalgamation, share exchange, business combination, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (A) in which a party is a constituent entity, (B) in which a Person or “group” (as defined in the Exchange Act and the rules promulgated thereunder) of Persons directly or indirectly acquires beneficial or record ownership of securities representing more than 20% of the outstanding securities of any class of voting securities of a party or any of its Subsidiaries or (C) in which a party or any of its Subsidiaries issues securities representing more than 20% of the outstanding securities of any class of voting securities of such party or any of its Subsidiaries; or

(ii) any sale, lease, exchange, transfer, license, acquisition or disposition of any business or businesses or assets that constitute or account for 20% or more of the consolidated book value of the fair market value of the assets of a party and its Subsidiaries, taken as a whole.

(e) “**Affiliate**” of any Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person.

(f) “**Business Day**” means any day other than a Saturday, a Sunday or a day on which banks in New York, New York are authorized or required by applicable Law to be closed.

(g) “**Company 2010 Equity Incentive Plan**” means the Company’s 2010 Equity Incentive Plan, as amended.

(h) “**Company 2020 Equity Incentive Plan**” means the Company’s 2020 Equity Incentive Plan, as amended.

(i) “**Company Adjustment Amount**” means the quotient of (a) the Company Equity Value, divided by (b) the sum of (i) the Company Equity Value, plus (ii) the Parent Equity Value.

(j) “**Company Capitalization Representations**” means each of the representations and warranties of the Company set forth in [Section 4.2\(a\)](#).

(k) “**Company Capital Stock**” means the outstanding shares of Company Common Stock and Company Preferred Stock.

(l) “**Company Charter**” means the Company’s Fourth Amended and Restated Certificate of Incorporation, dated as of June 14, 2024, as amended by that First Certificate of Amendment of Fourth Amended and Restated Certificate of Incorporation, dated as of October 3, 2024.

(m) “**Company Common Stock**” means the outstanding shares of common stock of the Company with a par value per share of \$0.001.

(n) “**Company Equity Incentive Plans**” means the Company 2010 Equity Incentive Plan and the Company 2020 Equity Incentive Plan.

(o) “**Company Equity Value**” means the sum of, as determined pursuant to Section 7.16, (a) \$50,000,000, minus (b) any undisclosed liability outside of the ordinary course of business of the Company greater than \$500,000 individually or in the aggregate that arises or is disclosed after the date hereof and prior to Closing (which for the sake of clarity shall not include Transaction Expenses).

(p) “**Company Fundamental Representations**” means each of the representations and warranties of the Company set forth in Section 4.1, Section 4.2, Section 4.3, Section 4.4, Section 4.5(a), and Section 4.23.

(q) “**Company Indebtedness**” means, with respect to the Company and its Subsidiaries, as of any time, without duplication, (i) all indebtedness for borrowed money of the Company or indebtedness issued by such Person in substitution or exchange for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture or other debt security, in each case, as of such time of the Company, and (iii) all interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by the Company, (iv) any premiums, prepayment fees or other penalties, fees, costs or expenses associated with payment of any indebtedness of the Company, and (v) all obligations of the Company for the reimbursement of any obligor on any line or letter of credit, banker’s acceptance, guarantee or similar credit transaction, in each case, to the extent drawn or claimed against. Notwithstanding the foregoing, the parties expressly acknowledge and agree that the Debt Financing Agreement will not constitute Company Indebtedness for purposes hereunder.

(r) “**Company Indebtedness Merger Shares**” means, the number of shares of Parent Common Stock (rounded up to the nearest whole share) to be issued to satisfy and cancel the Company Indebtedness as of the Closing Date pursuant to Section 7.16(a), which shall be a number of shares of Parent Common Stock equal to the Company Merger Shares; provided, however, that if the fair market value of the Company Merger Shares is greater than the Company Indebtedness as of the Closing Date, the Company Indebtedness Merger Shares issuable in satisfaction of the Company Indebtedness shall be reduced to that number of shares of Company Merger Shares sufficient to satisfy and cancel the full value of the Company Indebtedness, with the balance of the Company Merger Shares then to be issued to holders of Company Capital Stock pursuant to Section 3.1(a)(i) (such balance, the “**Company Merger Shares Post-Payment of Company Indebtedness**”).

(s) “**Company Merger Shares**” means product determined by multiplying (a) the quotient obtained by dividing (i) the Parent Outstanding Shares by (ii) the Parent Adjustment Amount, by (b) the Company Adjustment Amount.

(t) “**Company Options**” means options or other rights to purchase shares of Company Common Stock issued by the Company.

(u) “**Company Owned IP**” means all Intellectual Property owned by the Company and its Subsidiaries in whole or in part.

(v) “**Company Preferred Stock**” means the outstanding shares of preferred stock of the Company with a par value per share of \$0.001, including, for the avoidance of doubt, the Company Series A Preferred Stock.

(w) “**Company Series A Preferred Stock**” means the outstanding shares of Company Preferred Stock designated as Series A Preferred Stock.

(x) “**Company Triggering Event**” shall be deemed to have occurred if: (i) the Company Board shall have approved, endorsed or recommended any Acquisition Proposal, (ii) the Company Board shall have made a Company Board Adverse Recommendation Change, or (iii) the Company shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted pursuant to Section 6.4).

(y) “**Company Warrant**” means each warrant to purchase Company Capital Stock.

(z) “**Confidentiality Agreement**” means that certain mutual non-disclosure agreement, dated as of March 20, 2025, between the Company and Parent.

(aa) “**control**” (including the terms “controlled,” “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(bb) “**Intellectual Property**” means all intellectual property rights of any kind or nature in any jurisdiction throughout the world, including all of the following to the extent protected by applicable law: (i) trademarks or service marks (whether registered or unregistered), trade names, domain names, social media user names, social media addresses, logos, slogans, and trade dress, including applications to register any of the foregoing, together with the goodwill symbolized by any of the foregoing; (ii) patents, utility models and any similar or equivalent statutory rights with respect to the protection of inventions, and all applications for any of the foregoing, together with all re-issuances, continuations, continuations-in-part, divisionals, revisions, extensions and reexaminations thereof; (iii) copyrights (registered and unregistered) and applications for registration; (iv) trade secrets and customer lists, in each case to the extent any of the foregoing derives economic value (actual or potential) from not being generally known to other Persons who can obtain economic value from its disclosure or use, and other confidential information (“**Trade Secrets**”); and (v) any other proprietary or intellectual property rights of any kind or nature.

(cc) “**knowledge**” means, with respect to (i) the Company, the actual knowledge of those individuals set forth in Section 1.1(cc) of the Company Disclosure Letter after reasonable inquiry of such individual’s direct reports regarding the matter at issue and (ii) Parent, Intermediate Parent, Intermediate or Merger Sub, the actual knowledge of those individuals set forth in Section 1.1(cc) of the Parent Disclosure Letter after reasonable inquiry of such individual’s direct reports regarding the matter at issue. With respect to Intellectual Property, “**knowledge**” or “**known**” does not require the Company or Parent, as applicable, to conduct, have conducted, obtain, have obtained, review or have reviewed any freedom-to-operate opinions or similar opinions of counsel or any patent, trademark or other Intellectual Property clearance searches or search for or review any prior art.

(dd) “**Nasdaq**” means the Nasdaq Stock Market, LLC.

(ee) “**Nasdaq Reverse Stock Split**” means a reverse stock split of all issued and outstanding shares, or all of the authorized and issued and outstanding shares, as applicable, of Parent Common Stock at a reverse stock split ratio as mutually agreed to by Parent and the Company that is effected by Parent for the purpose of maintaining compliance with Nasdaq continued listing standards or for the purpose of complying with Nasdaq initial listing standards.

(ff) “**Parent 2017 Incentive Stock Plan**” means Parent’s 2017 Incentive Stock Plan, as amended.

(gg) “**Parent 2019 Stock Plan**” means Parent’s 2019 Stock Plan, as amended.

(hh) “**Parent 2023 Long-Term Incentive Plan**” means Parent’s 2023 Long-Term Incentive Plan, as amended.

(ii) “**Parent Adjustment Amount**” means the quotient of (a) the Parent Equity Value, divided by (b) the sum of (i) the Company Equity Value, plus (ii) the Parent Equity Value.

(jj) “**Parent Capitalization Representations**” means the representations and warranties of Parent, Intermediate Parent, Intermediate and Merger Sub set forth in Section 5.2(a).

(kk) “**Parent Equity Plans**” means the Parent 2017 Incentive Stock Plan, the Parent 2019 Stock Plan and the Parent 2023 Long-Term Incentive Plan.

(ll) “**Parent Equity Value**” means the sum of, as determined pursuant to Section 7.16, (a) \$30,000,000, minus (b) any undisclosed liability outside of the ordinary course of business of Parent greater than \$500,000 individually or in the aggregate that arises or is disclosed after the date hereof and prior to Closing (which for the sake of clarity shall not include Transaction Expenses).

(mm) “**Parent Fundamental Representations**” means each of the representations and warranties of Parent, Intermediate Parent, Intermediate and Merger Sub set forth in Section 5.1(a), Section 5.1(b), Section 5.2, Section 5.3, Section 5.4, Section 5.5(a), Section 5.6(i), Section 5.21 and Section 5.23.

(nn) “**Parent Indebtedness**” means, with respect to Parent as of any time, without duplication, (i) all indebtedness for borrowed money of Parent or indebtedness issued by such Person in substitution or exchange for borrowed money, (ii) indebtedness evidenced by any note, bond, debenture or other debt security, in each case, as of such time of Parent, and (iii) all interest rate and currency swaps, caps, collars and similar agreements or hedging devices under which payments are obligated to be made by Parent, (iv) any premiums, prepayment fees or other penalties, fees, costs or expenses associated with payment of any indebtedness of Parent, and (v) all obligations of Parent for the reimbursement of any obligor on any line or letter of credit, banker’s acceptance, guarantee or similar credit transaction, in each case, to the extent drawn or claimed against. Notwithstanding anything to the contrary contained herein, “Parent Indebtedness” shall not include the Convertible Financing or the Debt Financing Agreement, or any item that would otherwise constitute “Parent Indebtedness” that is an obligation between Parent and any wholly owned Subsidiary of Parent or between any two or more wholly owned Subsidiaries of Parent.

(oo) “**Parent Outstanding Shares**” means the total number of shares of Parent Common Stock outstanding on a fully diluted basis immediately prior to the Effective Time (including, without limitation, taking into account the effects of the Nasdaq Reverse Stock Split). For clarity, (i) all shares issued to, or that may be issuable to, the Parent Lenders pursuant to existing agreements with the Parent Lenders or the Parent Refinancing Agreements and (ii) all outstanding Parent Options, restricted stock, restricted stock units, warrants, conversion rights, exchange rights or any other rights to receive shares of Parent Common Stock, assuming their exercise, conversion, or exchange, as applicable, which exist or are reserved for issuance by Parent shall be included in the total number of shares of Parent Common Stock for purposes of determining the Parent Outstanding Shares, to the extent not terminated prior to the Closing, and no shares issuable in connection with the Convertible Financing shall be included in the Parent Outstanding Shares.

(pp) “**Parent Owned IP**” means all Intellectual Property owned by Parent and its Subsidiaries, in whole or in part.

(qq) “**Parent Restricted Stock Awards**” means each award with respect to a share of Parent Common Stock outstanding under any Parent Plan subject to risk of forfeiture or repurchase by Parent.

(rr) “**Parent Triggering Event**” shall be deemed to have occurred if: (i) Parent shall have failed to include in the Proxy Statement the Parent Board Recommendation, (ii) the Parent Board or any committee thereof shall have made a Parent Board Adverse Recommendation Change or approved, endorsed or recommended any Acquisition Proposal or (iii) Parent shall have entered into any letter of intent or similar document or any Contract relating to any Acquisition Proposal (other than an Acceptable Confidentiality Agreement permitted pursuant to Section 6.4).

(ss) “**Permitted Parent Liens**” means (i) Liens for Taxes and assessments not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, (ii) mechanics’, workmen’s, repairmen’s, warehousemen’s and carriers’ Liens arising in the ordinary course of business of the Company consistent with past practice and (iii) Liens disclosed in the Parent SEC Documents.

(tt) “**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including any Governmental Entity.

(uu) “**Proxy Statement**” means the proxy statement to be sent to Parent’s stockholders in connection with the Parent Stockholder Meeting, as may be amended or supplemented.

(vv) “**Representative**” means a party’s directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives.

(ww) “**SEC**” means the Securities and Exchange Commission.

(xx) “**Subsequent Transaction**” means any Acquisition Transaction (with all references to 20% in the definition of Acquisition Transaction being treated as references to 50% for these purposes).

(yy) “**Subsidiary**” means, with respect to any Person, any other Person of which stock or other equity interests having ordinary voting power to elect more than 50% of the board of directors or other governing body are owned, directly or indirectly, by such first Person.

(zz) “**Superior Offer**” means an unsolicited bona fide written Acquisition Proposal (with all references to 20% in the definition of Acquisition Transaction being treated as references to 50% for these purposes) that: (i) was not obtained or made as a direct or indirect result of a breach of (or in violation of) this Agreement and (ii) is on terms and conditions that the Parent Board or the Company Board, as applicable, determines in good faith, based on such matters that it deems relevant (including the likelihood of consummation thereof and the financing terms thereof), as well as any written offer by the other party to this Agreement to amend the terms of the Agreement, and following consultation with its outside legal counsel and financial advisors, if any, are more favorable, from a financial point of view, to Parent’s stockholders or the Company’s stockholders, as applicable, than the terms of the transactions contemplated hereby.

(aaa) “**Tax Return**” means any return, declaration, report, certificate, bill, election, claim for refund, information return, statement or other written information and any other document filed or supplied or required to be filed or supplied to (or as directed by) any Governmental Entity or any other Person with respect to Taxes, including any schedule, attachment or supplement thereto, and including any amendment thereof.

(bbb) “**Taxes**” means all U.S. federal, state and local and non-U.S. net income, gross income, gross receipts, sales, use, stock, ad valorem, transfer, transaction, franchise, profits, gains, registration, license, wages, lease, service, service use, employee and other withholding, imputed underpayment, social security, unemployment, welfare, disability, payroll, employment, excise, severance, stamp, occupation, workers’ compensation, premium, real property, personal property, escheat or unclaimed property, windfall profits, net worth, capital, value-added, alternative or add-on minimum, customs duties, estimated and other taxes, fees, assessments, charges or levies in the nature of a Tax (whether imposed, assessed, determined, administered, enforced or collected directly or through withholding and including taxes of any third party in respect of which a Person may have a duty to collect or withhold and remit and any amounts resulting from the failure to file any Tax Return), whether disputed or not, together with any interest and any penalties, additions to tax or additional amounts with respect thereto (or attributable to the nonpayment thereof).

(ccc) “**Transaction Expenses**” means the aggregate amount (without duplication) of all costs, fees and expenses incurred by third party service providers of the Company or Parent, as applicable, for services rendered to the Company or Parent, as applicable, in connection with the transactions contemplated by this Agreement.

Section 1.2 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule such reference shall be to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

Section 1.3 Currency. All references to “dollars” or “\$” or “US\$” in this Agreement refer to United States dollars, which is the currency used for all purposes in this Agreement.

ARTICLE II THE MERGER

Section 2.1 Formation of Intermediate Parent, Intermediate and Merger Sub. Parent has caused each of Intermediate Parent, Intermediate and Merger Sub to be organized under the laws of the State of Delaware.

Section 2.2 The Merger. Upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company. Following the Merger, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving company of the Merger (the “**Surviving Company**”) and a wholly-owned, direct subsidiary of Intermediate.

Section 2.3 Closing. Unless this Agreement is earlier terminated pursuant to the provisions of Article IX, and subject to the satisfaction or waiver of the conditions set forth in Article VIII, the consummation of the Merger (the “**Closing**”) shall take place remotely by the electronic exchange of documents, as promptly as practicable (but in no event later than the second Business Day following the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Article VIII, other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions), unless another time, date and place is mutually agreed upon by Parent and the Company in writing. The date on which the Closing actually takes place is referred to as the “**Closing Date**.”

Section 2.4 Effective Time. Upon the terms and subject to the provisions of this Agreement, at the Closing, the parties shall cause the Merger to be consummated by executing and filing a certificate of merger with respect to the Merger (the “***Certificate of Merger***”) with the Secretary of State of the State of Delaware (the “***Delaware Secretary of State***”), in such form as is required by, and executed in accordance with the relevant provisions of the DGCL. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Delaware Secretary of State or at such other time as Parent and the Company shall agree in writing and shall specify in the Certificate of Merger (the time the Merger becomes effective being the “***Effective Time***”).

Section 2.5 Effects of the Merger. At and after the Effective Time, the Merger shall have the effects set forth in this Agreement and in the relevant provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Company, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Company.

Section 2.6 Parent Governance.

(a) Parent Certificate of Incorporation. At the Effective Time, the certificate of incorporation of Parent shall be amended in the form of the Parent Charter Amendment by filing the Parent Charter Amendment with the Secretary of State of Nevada, until thereafter amended in accordance with its terms and as provided by applicable Law.

(b) Parent Bylaws. The Bylaws of Parent shall remain in effect as of and following the Effective Time, until thereafter amended in accordance with their terms and as provided by applicable Law.

(c) Board of Directors. The parties shall take all action necessary (including, to the extent necessary, removing and/or procuring the resignation of any directors on the Parent Board immediately prior to the Effective Time) so that, as of the Effective Time, the number of directors that comprise the full Board of Directors of Parent shall be seven (7) (or such other number of directors as Parent and the Company may mutually agree), and such Board of Directors shall upon the Effective Time initially consist of the Persons determined in accordance with Section 2.6(c) of the Parent Disclosure Letter.

(d) Parent Officers. The parties shall take all action necessary (including, to the extent necessary, procuring the resignation or removal of any officers of Parent immediately prior to the Effective Time) so that, as of the Effective Time, Parent’s officers shall initially consist of the persons designated by the Company prior to the Effective Time.

Section 2.7 Surviving Company Governance.

(a) Surviving Company Certificate of Incorporation. At the Effective Time, the Certificate of Incorporation of the Surviving Company shall, by virtue of the Merger and without any further action, be amended and restated to read in its entirety as set forth in an exhibit to the Certificate of Merger, and, as so amended and restated, shall be the Certificate of Incorporation of the Surviving Company until thereafter amended in accordance with applicable Law.

(b) Surviving Company Bylaws. At the Effective Time, the Bylaws of the Surviving Company shall be amended and restated to read in their entirety as the Bylaws of Merger Sub as in effect immediately prior to the Effective Time (except that references to the name of Merger Sub shall be replaced with references to the name of the Surviving Company), and, as so amended and restated, shall be the Bylaws of the Surviving Company until thereafter amended in accordance with applicable Law.

(c) Surviving Company Directors. The directors of Parent immediately following the Effective Time shall be the directors of the Surviving Company until the earlier of their resignation or removal or until their respective successors are duly elected and qualified.

(d) Surviving Company Officers. The officers of Parent immediately following the Effective Time shall be the officers of the Surviving Company until the earlier of their resignation or removal or until their respective successors are duly elected and qualified.

ARTICLE III EFFECT ON THE CAPITAL STOCK OF THE CONSTITUENT COMPANIES; EXCHANGE OF CERTIFICATES

Section 3.1 Treatment of Capital Stock.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Intermediate Parent, Intermediate, Merger Sub, the Company or the holders of any shares of capital stock of Parent, Intermediate Parent, Intermediate, Merger Sub or the Company:

(i) Subject to Section 3.3(f), if there is Merger Consideration remaining to be paid after Parent has satisfied the payment of the Company Indebtedness Merger Consideration, each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than any Excluded Shares or Dissenting Shares) shall be converted into and become exchangeable for the right to receive its allocation of the Company Merger Shares Post-Payment of Company Indebtedness as determined in accordance with the Company Charter (the “**Capital Stock Merger Consideration**”). As of the Effective Time, all such shares of Company Capital Stock shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and shall thereafter only represent the right to receive the Capital Stock Merger Consideration. For the sake of clarity and avoidance of doubt, the Capital Stock Merger Consideration may equal \$0.00 and the applicable Company Capital Stock may be cancelled for no consideration as of the Effective Time.

(ii) At the Effective Time, each share of Parent Common Stock issued and outstanding immediately prior to the Effective Time shall remain outstanding. Immediately following the Effective Time, shares of Parent Common Stock, if any, owned by the Surviving Company shall be surrendered to Parent without payment therefor.

(iii) Each share of Company Capital Stock held in the treasury of the Company or owned, directly or indirectly, by Parent, Intermediate Parent, Intermediate, Merger Sub or any Subsidiary of the Company or Parent immediately prior to the Effective Time (collectively, “*Excluded Shares*”) shall automatically be cancelled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(iv) Each share of common stock, par value \$0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and non-assessable share of common stock, par value \$0.001 per share, of the Surviving Company.

Section 3.2 Treatment of Company Options and Warrants. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Intermediate Parent, Intermediate, Merger Sub, the Company or any other Person, each Company Option and Company Warrant that is outstanding and unexercised immediately prior to the Effective Time shall automatically be terminated and cancelled without the payment of any consideration therefor, including any present or future right to receive any portion of the Merger Consideration. The Company shall, prior to the Effective Time, take all actions necessary or desirable in connection with the treatment of Company Options and Company Warrants contemplated by this Section 3.2.

Section 3.3 Exchange and Payment.

(a) Parent shall issue and deposit (or cause to be deposited) with a bank or trust company designated by Parent (the “*Exchange Agent*”), in trust for the benefit of holders of shares of Company Capital Stock immediately prior to the Effective Time (other than holders to the extent they hold Excluded Shares or Dissenting Shares), book-entry shares representing the shares of Parent Common Stock issuable pursuant to Section 3.1(a)(i). In addition, Parent shall make available by depositing with the Exchange Agent, as necessary from time to time after the Effective Time any dividends or other distributions payable pursuant to Section 3.3(d). All book-entry shares representing shares of Parent Common Stock, and any dividends or other distributions deposited with the Exchange Agent are hereinafter referred to as the “*Exchange Fund*.”

(b) If there is any Capital Stock Merger Consideration payable, then, within ten (10) Business Days after the Effective Time, the parties shall cause the Exchange Agent to mail to each holder of record of Company Capital Stock as of immediately prior to the Effective Time (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to shares of Company Capital Stock shall pass, only upon delivery of the completed letter of transmittal to the Exchange Agent, and which letter shall be in customary form and contain such other provisions as Parent or the Exchange Agent may reasonably specify) and (ii) instructions for use in effecting the surrender of any such share of Company Capital Stock in exchange for the Capital Stock Merger Consideration (together with any dividends or other distributions payable pursuant to Section 3.3(d)). Upon submission of a completed letter of transmittal to the Exchange Agent, duly completed and validly executed in accordance with the instructions thereto, and such other documents as the Exchange Agent may reasonably require, the applicable holder of Company Capital Stock shall be entitled to receive in exchange for its shares of Company Capital Stock so surrendered pursuant to the completed letter of transmittal (other than Excluded Shares or Dissenting Shares) (A) that number of whole shares of Parent Common Stock (after taking into account all shares of Company Capital Stock then held by such holder) to which such holder of Company Capital Stock shall have become entitled pursuant to Section 3.1(a)(i) (which shall be in uncertificated book-entry form), and (B) any dividends or other distributions payable pursuant to Section 3.3(d). No interest will be paid or accrued on any unpaid dividends and distributions, if any, payable to holders of shares of Company Capital Stock. Until surrendered as contemplated by this Section 3.3, each share of Company Capital Stock shall be deemed after the Effective Time to represent only the right to receive the Capital Stock Merger Consideration payable in respect thereof (together with any dividends or other distributions payable pursuant to Section 3.3(d)).

(c) If payment of the Capital Stock Merger Consideration is to be made to a Person other than the Person in whose name the share of Capital Stock is registered, it shall be a condition of payment that such share of Capital Stock so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and that the Person requesting such payment shall have paid any transfer and other Taxes required by reason of the payment of the Capital Stock Merger Consideration to a Person other than the registered holder of such share of Capital Stock or shall have established to the satisfaction of Parent that such Tax is not applicable.

(d) No dividends or other distributions with respect to Parent Common Stock with a record date after the Effective Time shall be paid to the holder of any Company Capital Stock with respect to the shares of Parent Common Stock that the holder thereof has the right to receive upon the surrender thereof until the holder thereof shall surrender such Company Capital Stock in accordance with this Article III. Following the submission of an executed letter of transmittal in accordance with this Article III, there shall be paid to the record holder thereof, without interest, (A) promptly after such surrender, the amount of any dividends or other distributions with a record date after the Effective Time theretofore paid with respect to such whole shares of Parent Common Stock, and (B) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to such surrender and a payment date subsequent to such surrender payable with respect to such whole shares of Parent Common Stock.

(e) The Capital Stock Merger Consideration (together with any dividends or other distributions payable pursuant to Section 3.3(d)) shall be deemed to have been issued and paid in full satisfaction of all rights pertaining to the shares of Company Capital Stock. At the Effective Time, the stock transfer books of the Company shall be closed and there shall be no further registration of transfers of the shares of Company Capital Stock that were outstanding immediately prior to the Effective Time.

(f) No fractional shares of Parent Common Stock shall be issued in connection with the Merger, and no certificates or scrip for any such fractional shares shall be issued, with no cash being paid for any fractional share eliminated by such rounding.

(g) Any portion of the Exchange Fund that remains undistributed to the holders of Company Capital Stock six months after the Effective Time shall be delivered to the Surviving Company, upon demand, and any remaining holders of Company Capital Stock (except to the extent representing Excluded Shares or Dissenting Shares) shall thereafter look only to the Surviving Company, as general creditors thereof, for payment of the Capital Stock Merger Consideration (together with any dividends or other distributions payable pursuant to Section 3.3(d)) (subject to abandoned property, escheat or other similar laws), without interest.

(h) None of Parent, the Surviving Company, the Exchange Agent or any other Person shall be liable to any Person in respect of shares of Parent Common Stock, dividends or other distributions with respect thereto properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Company Capital Stock shall not have been exchanged prior to two years after the Effective Time (or immediately prior to such earlier date on which the related Capital Stock Merger Consideration (and all dividends or other distributions with respect to shares of Parent Common Stock) would otherwise escheat to or become the property of any Governmental Entity), any such Capital Stock Merger Consideration (and such dividends, distributions and cash) in respect thereof shall, to the extent permitted by applicable Law, become the property of the Surviving Company, free and clear of all claims or interest of any Person previously entitled thereto.

(i) The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent on a daily basis. Any interest and other income resulting from such investments shall be paid to Parent.

(j) If any certificate representing Company Capital Stock shall have been lost, stolen or destroyed, upon the making of an affidavit, in form and substance reasonably acceptable to Parent, of that fact by the Person claiming such certificate to be lost, stolen or destroyed, then not earlier than the day after the Closing Date, the Exchange Agent will deliver in exchange for such lost, stolen or destroyed certificate the Capital Stock Merger Consideration payable in respect thereof (together with any dividends or other distributions payable pursuant to Section 3.3(d)).

Section 3.4 Withholding Rights. Parent, the Surviving Company and the Exchange Agent (each, a “**Withholding Agent**”) shall each be entitled to deduct and withhold, or cause to be deducted and withheld, from the consideration otherwise payable pursuant to this Agreement such amounts as any Withholding Agent is required to deduct and withhold under applicable Law; provided that no Withholding Agent shall deduct or withhold from any amount otherwise payable to such Persons set forth on Schedule A to the Company Disclosure Letter hereunder except in the event of a failure by such Persons (as applicable) to provide an IRS Form W-9 with its letter of transmittal or as a result of a change in applicable Law after the date hereof (in which case, the Withholding Agent shall comply with clauses (i) and (ii) below). To the extent that amounts are so deducted and withheld by a Withholding Agent and remitted to the appropriate Governmental Entity, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made. The Withholding Agent shall use commercially reasonable efforts to (i) notify each holder of Company Capital Stock at least five (5) Business Days prior to deducting or withholding any amounts of its intent to deduct and withhold and (ii) cooperate with such holder to minimize any such deductions and withholding. The Company shall use commercially reasonable efforts to deliver an affidavit, together with the appropriate notice to the IRS, in accordance with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) and in form and substance substantially identical to Exhibit B, each dated as of the Closing Date, stating that no interest in the Company is a United States real property interest.

Section 3.5 Dissenters Rights. Notwithstanding anything in this Agreement to the contrary, each share of the Company Capital Stock (other than Excluded Shares) outstanding immediately prior to the Effective Time and held by a holder who is entitled to demand and has properly demanded appraisal for such shares of the Company Capital Stock in accordance with Section 262 of the DGCL and, as of the Effective Time, have neither effectively withdrawn nor lost their rights to such appraisal and payment under the DGCL (“*Dissenting Shares*”), shall not be converted into or be exchangeable for the right to receive a portion of the Capital Stock Merger Consideration but shall be entitled only to such rights as are granted by Section 262 of the DGCL, unless and until such holder fails to perfect or withdraws or otherwise loses such holder’s right to appraisal and payment under the DGCL. If, after the Effective Time, any such holder fails to perfect or withdraws or loses such holder’s right to appraisal, such Dissenting Shares shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the portion of the Capital Stock Merger Consideration, if any, to which such holder is entitled pursuant to Section 3.1(a)(i), without interest. The Company shall give Parent (a) prompt notice of any demands received by the Company for appraisal of any shares of the Company Capital Stock issued and outstanding immediately prior to the Effective Time, attempted written withdrawals of such demands, and any other instruments served pursuant to the DGCL and received by the Company relating to stockholders’ rights to appraisal with respect to the Merger and (b) the opportunity to participate in all negotiations and proceedings with respect to any exercise of such appraisal rights under the DGCL. The Company shall not, except with the prior written consent of Parent, which shall not be unreasonably withheld, conditioned or delayed, voluntarily make any payment with respect to any demands for payment of fair value for capital stock of the Company, offer to settle or settle any such demands or approve any withdrawal of any such demands.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the corresponding section or subsection of the disclosure letter delivered by the Company to Parent (the “*Company Disclosure Letter*”) (it being agreed that the disclosure of any information in a particular section or subsection of the Company Disclosure Letter shall be deemed disclosure of such information with respect to any other section or subsection of this Agreement to which the relevance of such information is readily apparent on its face), the Company represents and warrants to Parent, Intermediate Parent, Intermediate and Merger Sub as follows (the term “Company” shall include any Subsidiaries of the Company, *mutatis mutandis*, except where context dictates otherwise):

Section 4.1 Organization, Standing and Power.

(a) The Company (i) is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (ii) has all requisite corporate or similar power and authority to own, lease and operate its properties and to carry on its business as now being conducted and (iii) is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except in the case of clause (iii), where the failure to be so qualified or licensed or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. For purposes of this Agreement, “*Material Adverse Effect*” means any event, change, circumstance, occurrence, effect or state of facts that is or would reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, results of operations of the Company, taken as a whole; provided, however, that Material Adverse Effect shall not include any event, change, circumstance, occurrence, effect or state of facts to the extent resulting from (1) changes or conditions generally affecting the industries in which the Company operates, or the economy or the financial, debt, banking, capital, credit or securities markets, in the United States, including effects on such industries, economy or markets resulting from any regulatory and political conditions or developments in general, (2) the outbreak or escalation of war or acts of terrorism or any natural disasters, acts of God or comparable events, epidemic, pandemic or disease outbreak (including the COVID-19 virus) or any worsening of the foregoing, or any declaration of martial law, quarantine or similar directive, policy or guidance or Law or other action by any Governmental Entity in response thereto, (3) changes in Law or GAAP, or the interpretation or enforcement thereof, (4) the public announcement of this Agreement, (5) any failure to meet internal or other estimates, predictions, projections or forecasts (provided that any facts or circumstances causing such failure may be considered to the extent not otherwise excluded by the other provisions hereof), or (6) any specific action taken (or omitted to be taken) by the Company at or with the express written consent of Parent or required by or expressly permitted by the terms of this Agreement; provided, that, with respect to clauses (1), (2) and (3), the impact of such event, change, circumstance, occurrence, effect or state of facts shall be excluded only to the extent it is not disproportionately adverse to the Company as compared to other participants in the industries in which the Company operates.

(b) The Company has previously made available to Parent true and complete copies of the Company's Certificate of Incorporation (the "**Company Charter**") and Bylaws (the "**Company Bylaws**") and the Certificate of Incorporation and Bylaws of the Company, in each case as amended to the date of this Agreement, and each as so delivered is in full force and effect. The Company is not in violation of any provision of its Certificate of Incorporation or Bylaws.

(c) Except with respect to the extent relating to the transactions contemplated by this Agreement or any other strategic alternatives, or in draft form, and except as may be redacted to preserve a privilege (including attorney-client privilege), the Company has made available to Parent true and complete copies of the minutes of all meetings of the Company's stockholders, the Company Board, and each committee of the Company Board held since January 1, 2024.

Section 4.2 Capital Stock.

(a) The authorized capital stock of the Company consists of 82,520,000 shares of Company Common Stock, and 44,866,071 shares of Company Preferred Stock. As of the close of business on August 12, 2025 (the "**Company Measurement Date**"), (i) 9,619,903 shares of Company Common Stock (excluding treasury shares) were issued and outstanding, (ii) 44,866,071 shares of Company Preferred Stock were issued and outstanding, (iii) 15,492,802 Company Options were issued and outstanding, (iv) 334,516 Company Warrants were issued and outstanding, and (v) no shares of Company Capital Stock were held by the Company in its treasury. Except as set forth above in this Section 4.2(a) or 4.2(b) of the Company Disclosure Letter, all outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable and not subject to any preemptive rights. Except as set forth above in this Section 4.2(a) and 4.2(b) of the Company Disclosure Letter, the Company does not have any outstanding bonds, debentures, notes or other obligations having the right to vote (or convertible into, or exchangeable or exercisable for, securities having the right to vote) with the stockholders of the Company on any matter. Except as set forth above in this Section 4.2(a) and Section 4.2(a) and 4.2(b) of the Company Disclosure Letter and except for changes since the close of business on the Company Measurement Date resulting from the exercise of any options or warrants as described above, as of the Company Measurement Date, the Company does not have any outstanding (A) shares of capital stock or other voting securities or equity interests of the Company, (B) securities of the Company convertible into or exchangeable or exercisable for shares of capital stock of the Company or other voting securities or equity interests of the Company, (C) stock appreciation rights, "phantom" stock rights, performance units, interests in or rights to the ownership or earnings of the Company or other equity equivalent or equity-based awards or rights, (D) subscriptions, options, warrants, calls, commitments, Contracts or other rights to acquire from the Company, or obligations of the Company to issue, any shares of capital stock of the Company, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or other voting securities or equity interests of the Company or rights or interests described in the preceding clause (C), or (E) obligations of the Company to repurchase, redeem or otherwise acquire any such securities or to issue, grant, deliver or sell, or cause to be issued, granted, delivered or sold, any such securities. Except as set forth in Section 4.2(a) of the Company Disclosure Letter, there are no stockholder agreements, voting trusts or other agreements or understandings to which the Company is a party or of which the Company has knowledge with respect to the holding, voting, registration, redemption, repurchase or disposition of, or that restricts the transfer of, any capital stock or other voting securities or equity interests of the Company.

(b) Section 4.2(b) of the Company Disclosure Letter sets forth a true and complete list of all holders, as of the Company Measurement Date, of outstanding Company Options and other similar rights to purchase or receive shares of Company Capital Stock under the Company Equity Incentive Plans, or otherwise, and Company Warrants (collectively, “***Company Stock Awards***”), indicating as applicable, with respect to each Company Stock Award then outstanding, the type of award granted, the number of shares of Company Common Stock subject to such Company Stock Award, the name of the agreement under which such Company Stock Award was granted, the date of grant, exercise or purchase price, vesting schedule, payment schedule (if different from the vesting schedule) and expiration thereof, the vesting status, whether the Company Stock Award is a non-statutory stock option or qualifies as an “incentive stock option” as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the “***Code***”), whether an 83(b) election was timely filed, and whether (and to what extent) the vesting of such Company Stock Award will be accelerated or otherwise adjusted in any way or any other terms will be triggered or otherwise adjusted in any way by the consummation of the Merger and the other transactions contemplated by this Agreement or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the Merger. The Company has made available to Parent true and complete copies of all the forms of all award agreements evidencing outstanding Company Stock Awards. The Company does not sponsor, maintain or administer any employee or director stock option, stock purchase or equity compensation plan or arrangement other than the ones issued under the Company Equity Incentive Plans. The Company is not under any obligation to issue shares of Company Capital Stock pursuant to any employee or director stock option, stock purchase or equity compensation plan or arrangement other than the ones issued under the Company Equity Incentive Plans.

Section 4.3 Subsidiaries. Except as set forth on Section 4.3 of the Company Disclosure Letter, (a) the Company does not have, nor has it ever had, any Subsidiaries and (b) the Company does not own, directly or indirectly, any equity, membership interest, partnership interest, joint venture interest, or other equity or voting interest in, or any interest convertible into, exercisable or exchangeable for any of the foregoing, nor is it under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution, guarantee, credit enhancement or other investment in, or assume any liability or obligation of, any Person.

Section 4.4 Authority.

(a) The Company has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to approve this Agreement or to consummate the Merger and the other transactions contemplated hereby, subject, in the case of the consummation of the Merger, to receipt of the Company Stockholder Approval. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent, Intermediate Parent, Intermediate and Merger Sub, constitutes a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the enforcement of creditors' rights generally or by general principles of equity).

(b) The Company Board, at a meeting duly called and held at which all directors of the Company were present, duly and adopted resolutions (i) determining that the terms of this Agreement, the Merger and the other transactions contemplated hereby are fair to and in the best interests of the Company's stockholders, (ii) approving and declaring advisable this Agreement and the transactions contemplated hereby, including the Merger, (iii) directing that this Agreement be submitted to the stockholders of the Company for adoption, and (iv) resolving to recommend that the Company's stockholders vote in favor of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, which resolutions have not been subsequently rescinded, modified or withdrawn in any way.

(c) The Company Stockholder Approval is the only vote of the holders of any class or series of the Company Capital Stock or other securities required in connection with the consummation of the Merger. Other than the Company Stockholder Approval, no vote of the holders of any class or series of the Company's capital stock or other securities is required in connection with the consummation of any of the transactions contemplated hereby to be consummated by the Company.

Section 4.5 No Conflict; Consents and Approvals.

(a) Except as set forth in Section 4.5(a) of the Company Disclosure Letter, the execution, delivery and performance of this Agreement by the Company does not, and the consummation of the Merger and the other transactions contemplated hereby and compliance by the Company with the provisions hereof will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancellation, modification or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any pledge, claim, lien, charge, option, right of first refusal, encumbrance or security interest of any kind or nature whatsoever (including any limitation on voting, sale, transfer or other disposition or exercise of any other attribute of ownership) (collectively, “**Liens**”) in or upon any of the properties, assets or rights of the Company under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, or require any consent, waiver or approval of any Person pursuant to, any provision of (i) the Company Charter or Company Bylaws, (ii) any material bond, debenture, note, mortgage, indenture, guarantee, license, lease, purchase or sale order or other contract, commitment, agreement, instrument, obligation, arrangement, understanding, undertaking, permit, concession or franchise, whether oral or written (each, including all amendments thereto, a “**Contract**”) to which the Company is a party or by which the Company or any of its properties or assets may be bound or (iii) subject to the governmental filings and other matters referred to in Section 4.5(b), any federal, state, local or foreign law (including common law), statute, ordinance, rule, code, regulation, order, judgment, injunction, decree or other legally enforceable requirement (“**Law**”) applicable to the Company or by which the Company or any of its properties or assets may be bound, except as, in the case of clauses (ii) and (iii), as individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration, filing with or notice to, any federal, state, local or foreign government or subdivision thereof or any other governmental, administrative, judicial, arbitral, legislative, executive, regulatory or self-regulatory authority, instrumentality, agency, commission or body (each, a “**Governmental Entity**”) is required by or with respect to the Company in connection with the execution, delivery and performance of this Agreement by the Company or the consummation by the Company of the Merger and the other transactions contemplated hereby or compliance with the provisions hereof, except for (i) the filing with the SEC of such reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), as may be required in connection with this Agreement and the transactions contemplated hereby, (ii) such other filings and reports as may be required pursuant to the applicable requirements of the Securities Act of 1933, as amended (the “**Securities Act**”), the Exchange Act and any other applicable state or federal securities, takeover and “blue sky” laws, (iii) the filing of the Certificate of Merger with the Delaware Secretary of State as required by the DGCL, and (iv) such other consents, approvals, orders, authorizations, registrations, declarations, filings or notices the failure of which to be obtained or made, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect.

Section 4.6 Financial Statements.

(a) True and complete copies of the (i) unaudited balance sheet of the Company as at December 31, 2024 and the related unaudited statements of operations, stockholders’ deficit and cash flows of the Company for the fiscal year ended December 31, 2024, together with all related notes thereto as of August 9, 2025, (ii) audited balance sheet of the Company as at December 31, 2023, and the related audited statements of operations, stockholders’ deficit and cash flows of the Company for the fiscal year ended December 31, 2023, together with all related notes thereto, accompanied by the reports thereon of the Company’s independent auditors (collectively referred to as the “**Company Financial Statements**”) and (iii) unaudited balance sheet of the Company as at June 30, 2025 (the “**Company Balance Sheet**”), and the related statements of operations and cash flows of the Company for the six (6) months ended June 30, 2025 (collectively referred to as the “**Company Interim Financial Statements**”), are attached hereto as Section 4.6(a) of the Company Disclosure Letter. Except as set forth on Section 4.6(a) of the Company Disclosure Letter, each of the Company Financial Statements and the Company Interim Financial Statements (x) are correct and complete in all material respects and have been prepared in accordance with the books and records of the Company; (y) have been prepared in accordance with generally accepted accounting principles in the United States (“**GAAP**”) applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto); and (z) fairly present, in all material respects, the financial position, results of operations and cash flows of the Company as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein and subject, in the case of the Company Interim Financial Statements, to normal and recurring year-end adjustments that will not, individually or in the aggregate, be material.

(b) The Company maintains a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of the financial statements of the Company in conformity with GAAP and to maintain accountability of the Company's assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accounting for the Company's assets is compared with the existing assets at regular intervals and appropriate action is taken with respect to any differences. The Company maintains internal control over financial reporting that provides reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

(c) Since January 1, 2025, neither the Company nor its independent auditors have identified (i) any significant deficiency or material weakness in the design or operation of the system of internal accounting controls utilized by the Company, (ii) any fraud, whether or not material, that involves the Company, the Company's management or other employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or (iii) any claim or allegation regarding any of the foregoing.

Section 4.7 No Undisclosed Liabilities. The Company does not have any liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, known or unknown, whether due or to become due and whether or not required to be recorded or reflected on a balance sheet under GAAP, except (a) to the extent specifically and adequately accrued or reserved against in the Company Balance Sheet, (b) for liabilities and obligations incurred in the ordinary course of business consistent with past practice (none of which is a liability for a breach or default under any contract, breach of warranty, tort, infringement, misappropriation or violation of Law) since the date of the Company Balance Sheet that are not individually or in the aggregate in excess of \$500,000, or (c) executory obligations under any Contracts to which the Company is a party and which do not result from a breach of such Contract by the Company.

Section 4.8 Absence of Certain Changes or Events. Except as set forth in Section 4.8 of the Company Disclosure Letter, since December 31, 2024 until the date hereof: (i) except in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby, the Company has conducted its business only in the ordinary course consistent with past practice; (ii) there has not been any change, event or development or prospective change, event or development that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect; and (iii) the Company has not:

(a) (i) declared, set aside or paid any dividends on, or made any other distributions (whether in cash, stock or property) in respect of, any of its capital stock or other equity interests, (ii) purchased, redeemed or otherwise acquired shares of capital stock or other equity interests of the Company or any options, warrants, or rights to acquire any such shares or other equity interests, other than pursuant to award agreements underlying Company Stock Awards granted under the Company Equity Incentive Plans in connection with a Company service provider's termination of service, or (iii) split, combined, reclassified or otherwise amended the terms of any of its capital stock or other equity interests or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other equity interests, other than issuances of Company Stock Awards granted to Company service providers under the Company Equity Incentive Plans;

(b) amended or otherwise changed, or authorized or proposed to amend or otherwise change, its certificate of incorporation or by-laws (or similar organizational documents);

(c) adopted or entered into a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or reorganization; or

(d) changed its financial or Tax accounting methods, principles or practices, except insofar as may have been required by a change in GAAP or applicable Law.

Section 4.9 Litigation. There is no action, suit, claim, arbitration, investigation, inquiry, grievance or other proceeding (each, an "**Action**") (or, to the Company's knowledge, any basis therefore) pending or, to the knowledge of the Company, threatened against or affecting the Company, any of its properties or assets, or any present or former officer, director or employee of the Company in such individual's capacity as such, other than any Action that (a) does not involve an amount in controversy in excess of \$250,000 and (b) does not seek injunctive or other non-monetary relief. Neither the Company nor any of its properties or assets is subject to any outstanding judgment, order, injunction, rule or decree of any Governmental Entity. There is no Action pending or, to the knowledge of the Company, threatened seeking to prevent, hinder, modify, delay or challenge the Merger or any of the other transactions contemplated by this Agreement.

Section 4.10 Compliance with Laws. The Company is and has been in compliance in all material respects with all Laws applicable to its businesses, operations, properties or assets. The Company has not received, as of the three (3) years immediately preceding the date hereof, a notice or other written communication alleging or relating to a possible material violation of any Law applicable to their businesses, operations, properties or assets. The Company has in effect all permits, licenses, variances, exemptions, applications, approvals, clearances, authorizations, registrations, formulary listings, consents, operating certificates, franchises, orders and approvals of all Governmental Entities necessary and required for it to own, lease or operate its properties and assets and to carry on its businesses and operations as now conducted (collectively, “*Permits*”), except where such failure would not reasonably be expected to be material to the Company.

Section 4.11 Benefit Plans.

(a) “*Company Plans*” means each “employee benefit plan” (within the meaning of section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“*ERISA*”), whether or not subject to ERISA), “multiemployer plans” (within the meaning of ERISA section 3(37)), and all stock purchase, stock option, phantom stock or other equity-based plan, severance, employment, collective bargaining, change-in-control, fringe benefit, bonus, incentive, deferred compensation, supplemental retirement, health, life, or disability insurance, dependent care, employee loans, vacation and all other employee benefit and compensation plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), whether formal or informal, written or oral, sponsored, maintained, or contributed to (or required to be contributed to), by the Company for the benefit of any current or former employee or other individual service provider of the Company (or such employee or other individual service provider’s dependents) or with respect to which the Company has any present or future liability or obligation (contingent or otherwise) or with respect to which it is otherwise bound. Section 4.11(a) of the Company Disclosure Letter contains a true and complete list of each Company Plan, other than (i) any employment offer letter or other employment agreement that is terminable “at-will” or following a statutory notice period and does not provide for severance, retention, change of control, transaction or similar bonuses, (ii) any individual consulting agreement that is terminable by the Company without advance notice and without any payment (other than payment for services performed prior to termination of the agreement), and (iii) any individual option or other equity award grant notices and agreements that do not materially deviate from the representative forms of such grant notices and agreements made available to Parent. The Company has provided or made available to Parent a current, accurate and complete copy of each Company Plan required to be listed on Section 4.11(a) of the Company Disclosure Letter, or if such Company Plan is not in written form, a written summary of all of the material terms of such Company Plan. With respect to each Company Plan required to be listed on Section 4.11(a) of the Company Disclosure Letter, the Company has furnished or made available to Parent a current, accurate and complete copy of, to the extent applicable: (i) all documents embodying or governing such Company Plan and any related trust agreement or other funding instrument, (ii) the most recent determination letter of the Internal Revenue Service (the “*IRS*”), (iii) any summary plan description, summary of material modifications, and other similar material written communications (or a written description of any material oral communications) to the employees of the Company concerning the extent of the benefits provided under a Company Plan, (iv) all non-routine correspondence to and from any governmental agency, and (v) for the three most recent years and as applicable (A) the Form 5500 and attached schedules, (B) audited financial statements, (C) nondiscrimination testing results and (D) actuarial valuation reports.

(b) Neither the Company nor any member of its “**Controlled Group**” (defined as any organization which is a member of a controlled, affiliated or otherwise related group of entities within the meaning of Sections 414(b), (c), (m) or (o) of the Code) has ever sponsored, maintained, contributed to or been required to contribute to or incurred any liability (contingent or otherwise) with respect to: (i) a “multiemployer plan” (within the meaning of ERISA section 3(37)), (ii) an “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA (“**Pension Plan**”) that is subject to Title IV of ERISA or Section 412 of the Code, (iii) a Pension Plan which is a “multiple employer plan” as defined in Section 413 of the Code, or (iv) a “funded welfare plan” within the meaning of Section 419 of the Code.

(c) With respect to the Company Plans:

(i) each Company Plan complies in all material respects with its terms and materially complies in form and in operation with the applicable provisions of ERISA and the Code and all other applicable legal requirements;

(ii) each Company Plan intended to be qualified under Section 401(a) of the Code has received a favorable determination, advisory and/or opinion letter, as applicable, from the IRS that it is so qualified and nothing has occurred to the knowledge of the Company since the date of such letter that would reasonably be expected to cause the loss of the sponsor’s ability to rely upon such letter, and nothing has occurred to the knowledge of the Company that would reasonably be expected to result in the loss of the qualified status of such Company Plan;

(iii) there is no Action (including any investigation, audit or other administrative proceeding) by the Department of Labor, the Pension Benefit Guaranty Corporation (the “**PBGC**”), the IRS or any other Governmental Entity or by any plan participant or beneficiary pending, or to the knowledge of the Company, threatened, relating to the Company Plans, any fiduciaries thereof with respect to their duties to the Company Plans or the assets of any of the trusts under any of the Company Plans (other than routine claims for benefits);

(iv) none of the Company Plans currently provides, or reflects or represents any liability to provide post-termination or retiree welfare benefits to any person for any reason, except as may be required by Section 601, *et seq.* of ERISA and Section 4980B(b) of the Code or other applicable similar law regarding health care coverage continuation (collectively “**COBRA**”), and none of the Company or any members of its Controlled Group has any liability to provide post-termination or retiree welfare benefits to any person or ever represented, promised or contracted to any employee or former employee of the Company (either individually or to Company employees as a group) or any other person that such employee(s) or other person would be provided with post-termination or retiree welfare benefits, except to the extent required by statute or except with respect to a contractual obligation to reimburse any premiums such person may pay in order to obtain health coverage under COBRA;

(v) except as set forth on Section 4.11(c)(v) of the Company Disclosure Letter, each Company Plan is subject exclusively to United States Law; and

(vi) except as set forth on Section 4.11(c)(vi) of the Company Disclosure Letter, the execution and delivery of this Agreement, the Company Stockholder Approval, and the consummation of the Merger will not, either alone or in combination with any other event, (A) entitle any current or former employee, officer, director or consultant of the Company to severance pay, unemployment compensation or any other similar termination payment, or (B) accelerate the time of payment or vesting, or increase the amount of or otherwise enhance any benefit due any such employee, officer, director or consultant.

(d) The Company is not a party to any agreement, contract, arrangement or plan (including any Company Plan) that may reasonably be expected to result, separately or in the aggregate, in connection with the transactions contemplated by this Agreement (either alone or in combination with any other events), in the payment of any “parachute payments” within the meaning of Section 280G of the Code. There is no agreement, plan or other arrangement to which the Company is a party or by which the Company is otherwise bound to compensate any person in respect of Taxes or other liabilities incurred with respect to Section 409A or 4999 of the Code.

(e) Section 4.11(c) of the Company Disclosure Letter contains a true and complete list of each Company Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law). Each Company Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law) complies in both form and operation in all material respects with the requirements of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law) and all applicable IRS guidance issued with respect thereto (and has so complied for the entire period during which Section 409A of the Code has applied to such Company Plan) so that no amount paid or payable pursuant to any such Company Plan is subject to any additional Tax or interest under Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law). All Company Stock Awards are exempt from application of Section 409A of the Code.

(f) No Company Plan provides major or supplemental medical health or long-term disability benefits that are not fully insured through an insurance contract.

Section 4.12 Labor and Employment Matters.

(a) The Company is, and for the three (3) years immediately preceding the date hereof has been, in compliance in all material respects with all applicable Laws relating to labor and employment, including those relating to employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, non-discrimination in employment, workers’ compensation, the collection and payment of withholding and/or payroll Taxes and similar Taxes, unemployment compensation, equal employment opportunity, discrimination, harassment, employee and contractor classification, information privacy and security, and continuation coverage with respect to group health plans. For the last three (3) years immediately preceding the date hereof, there has not been, and as of the date of this Agreement there is not pending or, to the knowledge of the Company, threatened, any labor dispute, work stoppage, labor strike or lockout against the Company by employees.

(b) No employee of the Company is covered by an effective or pending collective bargaining agreement or similar labor agreement. To the knowledge of the Company, there has not been any activity on behalf of any labor union, labor organization or similar employee group to organize any employees of the Company. Except as would not be material, there are no (i) unfair labor practice charges or complaints against the Company pending before the National Labor Relations Board or any other labor relations tribunal or authority and to the knowledge of the Company no such representations, claims or petitions are threatened, (ii) representations, claims or petitions pending before the National Labor Relations Board or any other labor relations tribunal or authority or (iii) grievances or pending arbitration proceedings against the Company that arose out of or under any collective bargaining agreement.

(c) To the knowledge of the Company, no current officer of the Company intends, or is expected, to terminate such individual's employment relationship with such entity in connection with or as a result of the transactions contemplated hereby.

(d) For the three (3) years immediately preceding the date hereof, (i) the Company has not effectuated a "plant closing" (as defined in the Worker Adjustment Retraining and Notification Act of 1988, as amended (the "**WARN Act**")) affecting any site of employment or one or more facilities or operating units within any site of employment or facility, (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) in connection with the Company affecting any site of employment or one or more facilities or operating units within any site of employment or facility and (iii) the Company has not engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state, local or foreign Law. Except as would not be material, the Company currently properly classifies and, for the last three (3) years immediately preceding the date hereof has properly classified (i) its employees as exempt or non-exempt in accordance with applicable overtime laws, and (ii) its independent contractors in accordance with applicable Law.

(e) Except as set forth on Section 4.12(e) of the Company Disclosure Letter, with respect to any current employee, or officer of the Company, there have been no Actions against the Company pending, or to the Company's knowledge, threatened to be brought or filed, in connection with the employment or engagement of any current employee or officer of the Company, including, without limitation, any claim relating to employment discrimination, harassment, retaliation, equal pay, employment classification or any other employment related matter arising under applicable Laws.

(f) Except as set forth on Section 4.12(f) of the Company Disclosure Letter or with respect to any Company Plan (which subject is addressed in Section 4.11 above), the execution of this Agreement and the consummation of the transactions set forth in or contemplated by this Agreement will not result in any breach or violation of, or cause any payment to be made under, any applicable Laws respecting labor and employment or any collective bargaining agreement to which the Company is a party.

(g) For the three (3) years immediately preceding the date hereof, (i) no allegations of workplace sexual harassment, discrimination or other misconduct have been made, initiated, filed or, to the knowledge of the Company, threatened against the Company or any of their respective current directors, officers or senior level management employees, (ii) to the knowledge of the Company, no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) the Company has not entered into any settlement agreement for which outstanding obligations remain related to allegations of sexual harassment, discrimination or other misconduct by any of their directors or officers described in clause (i) hereof.

Section 4.13 Environmental Matters.

(a) Except as, individually or in the aggregate, has not had and would not reasonably be expected to be material to the Company, (i) the Company has conducted their respective businesses in compliance with all, and have not violated any, applicable Environmental Laws; (ii) the Company has obtained all Permits of all Governmental Entities and any other Person that are required under any Environmental Law; (iii) there has been no release of any Hazardous Substance by the Company or any other Person in any manner that has given or would reasonably be expected to give rise to any remedial or investigative obligation, corrective action requirement or liability of the Company under applicable Environmental Laws; (iv) the Company has not received any claims, notices, demand letters or requests for information (except for such claims, notices, demand letters or requests for information the subject matter of which has been resolved prior to the date of this Agreement) from any federal, state, local, foreign or provincial Governmental Entity or any other Person asserting that the Company is in violation of, or liable under, any Environmental Law; (v) no Hazardous Substance has been disposed of, arranged to be disposed of, released or transported in violation of any applicable Environmental Law, or in a manner that has given rise to, or that would reasonably be expected to give rise to, any liability under any Environmental Law, in each case, on, at, under or from any current or former properties or facilities owned or operated by the Company or as a result of any operations or activities of the Company at any location and, to the knowledge of the Company, Hazardous Substances are not otherwise present at or about any such properties or facilities in amount or condition that has resulted in or would reasonably be expected to result in liability to the Company under any Environmental Law; and (vi) the Company nor any of its properties or facilities are subject to, or are threatened to become subject to, any liabilities relating to any suit, settlement, court order, administrative order, regulatory requirement, judgment or claim asserted or arising under any Environmental Law or any agreement relating to environmental liabilities.

(b) As used herein, “**Environmental Law**” means any Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface and subsurface soils and strata, wetlands, plant and animal life or any other natural resource) or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances.

(c) As used herein, “**Hazardous Substance**” means any substance listed, defined, designated, classified or regulated as a waste, pollutant or contaminant or as hazardous, toxic, radioactive or dangerous or any other term of similar import under any Environmental Law, including but not limited to petroleum.

Section 4.14 Taxes.

(a) The Company has (i) filed all income and other Tax Returns required to be filed by it (taking into account any applicable extensions thereof) (and all such Tax Returns are true, accurate and complete in all material respects); and (ii) paid in full (or caused to be paid in full) all Taxes that are required to be paid by it, whether or not such Taxes were shown as due on such Tax Returns.

(b) All Taxes not yet due and payable by the Company as of the date of the Company Balance Sheet have been, in all respects, properly accrued in accordance with GAAP on the Company Financial Statements, and such Company Financial Statements reflect an adequate reserve (in accordance with GAAP) for all Taxes accrued but unpaid by the Company through the date of such financial statements. Since the date of the Company Financial Statements, the Company has not incurred, individually or in the aggregate, any liability for Taxes outside the ordinary course of business consistent with past practice.

(c) The Company has not executed any waiver of any statute of limitations on, or extended the period for the assessment or collection of, any amount of Tax, in each case that has not since expired.

(d) No audits or other investigations, proceedings, claims, assessments or examinations by any Governmental Entity (each, a “**Tax Action**”) with respect to Taxes or any Tax Return of the Company are presently in progress or have been asserted, threatened or proposed in writing and to the knowledge of the Company, no such Tax Action is being contemplated. No deficiencies or claims for Taxes have been claimed, proposed, assessed or asserted in writing against the Company by a Governmental Entity, other than any such claim, proposal, assessment or assertion that has been satisfied by payment in full, settled or withdrawn.

(e) Subject to exceptions as would not be material, the Company has timely withheld all Taxes required to have been withheld from payments made (or deemed made) to its employees, independent contractors, creditors, shareholders and other third parties and, to the extent required, such Taxes have been timely paid to the relevant Governmental Entity.

(f) The Company has not engaged in a “listed transaction” as set forth in Treasury Regulations § 1.6011-4(b)(2).

(g) The Company (i) is not a party to or bound by, or has any liability pursuant to, any Tax sharing, allocation, indemnification or similar agreement or obligation, other than any such agreement or obligation which is a customary commercial agreement obligation entered into in the ordinary course of business with vendors, lessors, lenders or the like the primary purpose of which is unrelated to Taxes (each, an “**Ordinary Course Agreement**”); (ii) has never been a member of a group (other than a group the common parent of which is the Company) filing a consolidated, combined, affiliated, unitary or similar income Tax Return; and (iii) has no liability for the Taxes of any Person (other than the Company) pursuant to Treasury Regulations § 1.1502-6 (or any similar provision of state, local or non-United States Law) as a transferee or successor, by Contract (other than any Ordinary Course Agreement) or otherwise by operation of Law.

(h) No private letter rulings, technical advice memoranda, or similar material agreements or rulings have been requested, entered into or issued by any Governmental Entity with respect to the Company which rulings remain in effect.

(i) The Company will not be required to include any material amount of income in, or exclude any material amount of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) a change in, or use of improper, method of accounting requested or initiated on or prior to the Closing Date, (ii) a “closing agreement” as described in Section 7121 of the Code (or any similar provision of Law) executed on or prior to the Closing Date, (iii) an installment sale or open transaction disposition made on or prior to the Closing Date, (iv) any prepaid amount received or deferred revenue accrued on or prior to the Closing Date, other than in respect of such amounts reflected in the Company Balance Sheet or received in the ordinary course of business since the date of the Company Balance Sheet, (v) to the Company’s knowledge, an intercompany transaction or excess loss amount described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law), (vi) an election under Section 965 of the Code, or (vii) the application of Sections 951 or 951A of the Code with respect to income earned or recognized or payments received prior to the Closing.

(j) There are no liens for Taxes upon any of the assets of the Company other than Liens described in clause (i) of the definition of Permitted Company Liens, none of which is material in amount.

(k) The Company has not distributed stock of another Person or has had its stock distributed by another Person, in a transaction (or series of transactions) that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(l) The Company has not been a United States real property holding corporation, as defined in Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(m) No material claim has been made in writing by any Governmental Entity in a jurisdiction where the Company does not currently file a Tax Return of a certain type or pay Taxes of a certain type that the Company is or may be subject to taxation by such jurisdiction of such type.

(n) There are no outstanding shares of company stock issued in connection with the performance of services (within the meaning of Section 83 of the Code) for which a valid election under Section 83(b) of the Code has not been made.

For purposes of this Section 4.14, where the context permits, each reference to the Company shall include a reference to any person for whose Taxes the Company is liable under applicable Law.

Section 4.15 Contracts.

(a) Section 4.15(a) of the Company Disclosure Letter sets forth each contract that, as of the date of this Agreement, that would constitute a “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K under the Securities Act), with respect to the Company (assuming the Company were subject to the requirements of the Exchange Act) (all such contracts, in addition to those set forth in Section 4.15(b) of the Company Disclosure Letter, but excluding any Company Plans, “**Material Contracts**”).

(b) Section 4.15(b) of the Company Disclosure Letter lists the following contracts, in effect as of the date of this Agreement, which involve payment or receipt by the Company in excess of \$1,000,000 in the aggregate, which for the purposes of this Agreement shall be considered Material Contracts:

(i) each Contract relating to any agreement of indemnification (not entered into in the ordinary course of business) or guaranty;

(ii) each Contract containing (A) any covenant limiting the freedom of the Company or the Surviving Company to engage in any line of business or compete with any Person, or limiting the development, manufacture or distribution of the Surviving Company’s products or services, (B) any most-favored pricing arrangement, (C) any exclusivity provision in favor of a third party, or (D) any non-solicitation provision applicable to the Company, in the case of the foregoing clause (D), which are material to the Company, taken as a whole;

(iii) each Contract relating to capital expenditures and requiring payments after the date of this Agreement in excess of \$1,000,000 pursuant to its express terms and not cancelable without penalty;

(iv) each Contract relating to the disposition or acquisition of material assets or any ownership interest in any Person;

(v) each Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit or creating any Liens (other than Company Permitted Liens) with respect to any assets of the Company or any loans or debt obligations with officers or directors of the Company or any other Contract involving Company Indebtedness;

(vi) (A) any Contract involving supply or distribution (identifying any that contain exclusivity provisions), (B) any Contract involving a dealer, distributor, joint marketing, alliance, joint venture, cooperation, development or other Contract currently in force under which the Company has continuing obligations to develop or market any product, technology or service, or any Contract pursuant to which the Company has continuing obligations to develop any Intellectual Property that will not be owned, in whole or in part, by the Company or (C) any Contract to license any patent, trademark registration, service mark registration, trade name or copyright registration to or from any third party to manufacture or produce any product, service or technology of the Company or any Contract to sell, distribute or commercialize any products or service of the Company, in each case, except for Contracts entered into in the ordinary course of business;

(vii) each Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to the Company in connection with the transactions contemplated hereby or which contains any tail or right of first refusal currently in effect; and

(viii) each Contract relating to leases of real properties with respect to which the Company directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by the Company.

(c) (i) Each Material Contract is valid and binding on the Company, and to the knowledge of the Company, each other party thereto, and is in full force and effect and enforceable in accordance with its terms; (ii) the Company, and, to the knowledge of the Company, each other party thereto, has performed all material obligations required to be performed by it under each Material Contract; and (iii) there is no material default, breach or termination or acceleration event (other than expiration of a Material Contract in accordance with its terms) under any Material Contract by the Company or, to the knowledge of the Company, any other party thereto, and no event or condition has occurred that constitutes, or, after notice or lapse of time or both, would constitute, a material default, breach or termination or acceleration event on the part of the Company or, to the knowledge of the Company, any other party thereto under any such Material Contract, nor has the Company received any notice of any such material default, event or condition. The Company has made available to Parent true and complete copies of all Material Contracts, including all amendments thereto. Except as set forth in Section 4.15 of the Company Disclosure Letter, there are no Material Contracts that are not in written form. No Person is renegotiating, or has a right pursuant to the terms of any Material Contract to change, any material amount paid or payable to Parent under any Parent Material Contract or any other material term or provision of any Parent Material Contract.

Section 4.16 Insurance. The Company is covered by valid and currently effective insurance policies issued in favor of the Company that are customary and adequate for companies of similar size in the industries and locations in which the Company operates. The Company has made available true and complete copies of all material insurance policies issued in favor of the Company, or pursuant to which the Company is a named insured or otherwise a beneficiary, as well as any historic incurrence-based policies still in force. With respect to each such insurance policy, (a) such policy is in full force and effect and all premiums due thereon have been paid, (b) as of the date of this Agreement, the Company has not received written notice that it is in breach or default, or that it has not taken any action or failed to take any action which (with or without notice or lapse of time, or both) would constitute such a breach or default, or would permit termination or modification of, any such policy and (c) to the knowledge of the Company, no insurer issuing any such policy has been declared insolvent or placed in receivership, conservatorship or liquidation. To the knowledge of the Company, no cancellation or termination of any such policy will result from the consummation of the transactions contemplated hereby.

Section 4.17 Properties.

(a) The Company has good and valid title to, or in the case of leased property and leased tangible assets, a valid leasehold interest in, all of its real properties and tangible assets that are necessary for the Company to conduct their respective businesses as currently conducted, free and clear of all Liens other than, except as set forth on Section 4.17(a) of the Company Disclosure Letter, (i) Liens for Taxes and assessments not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings and (ii) mechanics', workmen's, repairmen's, warehousemen's and carriers' Liens arising in the ordinary course of business of the Company consistent with past practice ("**Permitted Company Liens**"). The tangible personal property currently used in the operation of the business of the Company is in good working order (reasonable wear and tear excepted), in all material respects.

(b) The Company is in compliance with the terms of all leases to which it is a party, and all such leases are in full force and effect, in all material respects. The Company enjoys peaceful and undisturbed possession under all such leases, in all material respects.

(c) Section 4.17(c) of the Company Disclosure Letter sets forth a true and complete list of (i) all real property owned by the Company and (ii) all real property leased for the benefit of the Company.

(d) This Section 4.17 does not relate to Intellectual Property, which is the subject of Section 4.18.

Section 4.18 Intellectual Property.

(a) Section 4.18(a) of the Company Disclosure Letter sets forth a true and complete list of all of the following that are owned by or licensed to the Company: (i) patents and patent applications; (ii) trademark registrations and applications; (iii) copyright registrations and applications, in each case owned by the Company ((i)-(iii), collectively, "**Company Registered IP**") and (iv) domain names. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect (A) all of the Company Registered IP owned by the Company, and with respect to Company Registered IP not owned by the Company, to the actual knowledge of the Company, is subsisting, (B) any Company Registered IP that is registered or issued is, to the knowledge of the Company, valid and enforceable, (C) as of the date of this Agreement, Company has not received written notice that (x) any such Company Registered IP is involved in any interference, reissue, derivation, reexamination, opposition, cancellation or similar proceeding contesting the validity, enforceability, claim construction, ownership or right to use, sell, offer for sale, license or dispose of any Company Registered IP, or (y) any such action is threatened with respect to any of the Company Registered IP and (D) all Company Registered IP owned by the Company is owned exclusively by the Company, free and clear of any and all Liens (other than Permitted Company Liens), and any Company Registered IP not owned by the Company is, to the knowledge of the Company, free and clear of any and all Liens (other than Permitted Company Liens).

(b) Section 4.18(b) of the Company Disclosure Letter accurately identifies (i) all contracts pursuant to which any Intellectual Property is licensed to the Company (other than (A) any generally commercially available software and Intellectual Property associated with such software, in each case that is licensed on a non-exclusive basis to the Company, (B) any Intellectual Property licensed on a nonexclusive basis ancillary to the purchase or use of equipment, reagents or other materials, (C) any confidential information provided under confidentiality agreements and (D) agreements between Company and its employees in Company's standard form thereof).

(c) Section 4.18(c) of the Company Disclosure Letter accurately identifies each Company contract pursuant to which any Person has been granted any license (or option to license) or covenant not to sue under, or otherwise has received or acquired any right or interest in, any Company Registered IP (other than (i) any confidential information provided under confidentiality agreements and (ii) any Company Registered IP licensed to academic collaborators, suppliers or service providers for the sole purpose of enabling such academic collaborator, supplier or service providers to provide services for Company's benefit).

(d) To the knowledge of Company, the Company Registered IP constitutes all Intellectual Property necessary for Company to conduct its business as currently conducted; provided, however, that the foregoing representation is not a representation with respect to non- infringement of Intellectual Property.

(e) The Company has taken commercially reasonable measures to maintain the confidentiality of all information that constitutes or constituted a material Trade Secret of the Company, including requiring all Persons having access thereto to execute written non-disclosure agreements or other binding obligations to maintain confidentiality of such information.

(f) (i) To the knowledge of the Company, the conduct of the businesses of the Company, including the manufacture, marketing, offering for sale, sale, importation, use or intended use or other disposal of any product as currently sold or under development by Company, has not, in the six (6) years immediately preceding the date hereof, infringed, misappropriated or diluted, and does not infringe, misappropriate or dilute, any Intellectual Property of any Person, (ii) the Company has not received any written notice or claim asserting or suggesting that such infringement, misappropriation, or dilution is or may be occurring or has or may have occurred, and (iii) to the knowledge of the Company, no Person is infringing, misappropriating, or diluting in any material respect any Company Registered IP.

(g) In the three (3) years immediately preceding the date hereof: (i) the Company has taken commercially reasonable steps designed to protect the confidentiality and security of the computer and information technology systems used by the Company (the "**IT Systems**") and the information stored or contained therein or transmitted thereby, in all material respects, and (ii) to the knowledge of the Company, there has been no unauthorized or improper use, loss, access, or transmittal, of such information in the possession or control of the Company.

(h) In the three (3) years immediately preceding the date hereof: (i) to the knowledge of the Company, the Company has complied in all material respects with all Laws relating to privacy and data protection applicable to the collection, retention, protection, and use of information that alone or in combination with other information can be used to identify an individual ("**Personal Information**") by the Company (collectively, "**Company Privacy Laws**"), (ii) no claims by or before any Governmental Entity have been asserted or, to the knowledge of the Company, have been threatened in writing against the Company alleging a violation of any applicable Company Privacy Laws, and (iii) neither this Agreement nor the consummation of the transactions contemplated hereby will breach or otherwise violate any applicable Company Privacy Laws in any material respect; and (iv) the Company has taken commercially reasonable steps designed to protect any Personal Information collected, retained or used by the Company against unauthorized or improper use, loss, access, or transmittal.

(i) Except as set forth on Section 4.18(i) of the Company Disclosure Letter, to the knowledge of the Company, no government funding, facilities or resources of a university, college, other educational institution or research center or funding from third parties was used in the development of the Company Registered IP, and no Governmental Entity, university, college, other educational institution or research center has, to the knowledge of the Company, any claim or right in or to the Company Registered IP.

(j) Except as set forth on Section 4.18(j) of the Company Disclosure Letter, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby, will not result in the loss of, or give rise to any right of any third party to terminate or modify any of the rights or obligations of the Company under any agreement under which the Company grants to any Person, or any Person grants to the Company, a license or right under or with respect to any Intellectual Property that is material to any of the businesses of the Company, including any of the agreements listed in Section 4.18(b) or Section 4.18(c) of the Company Disclosure Letter.

Section 4.19 State Takeover Statutes. As of the date hereof and at all times on or prior to the Effective Time, the Company Board has taken all actions so that the restrictions applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and the timely consummation of the Merger and the other transactions contemplated hereby and will not restrict, impair or delay the ability of Parent, Intermediate Parent, Intermediate or Merger Sub, after the Effective Time, to vote or otherwise exercise all rights as a stockholder of the Surviving Company. No other “moratorium,” “fair price,” “business combination,” “control share acquisition” or similar provision of any state anti-takeover Law (collectively, “**Takeover Laws**”) or any similar anti-takeover provision in the Company Charter or Company Bylaws is, or at the Effective Time will be, applicable to this Agreement, the Merger or any of the other transactions contemplated hereby.

Section 4.20 No Rights Plan. There is no stockholder rights plan, “poison pill” anti- takeover plan or other similar device in effect to which the Company is a party or is otherwise bound.

Section 4.21 Related Party Transactions. Except as set forth on Section 4.21 of the Company Disclosure Letter, since January 1, 2023 through the date of this Agreement, there have been no transactions, agreements, arrangements or understandings between the Company, on the one hand, and the Affiliates of the Company, on the other hand that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act (assuming the Company were subject to the requirements of the Exchange Act).

Section 4.22 Certain Payments. Neither the Company nor, to the knowledge of the Company, any of its directors, executives, representatives, agents or employees (a) has used or is using any corporate funds for any illegal contributions, gifts, entertainment or other unlawful expenses relating to political activity, (b) has used or is using any corporate funds for any direct or indirect unlawful payments to any foreign or domestic governmental officials or employees, (c) has violated or is violating any provision of the Foreign Corrupt Practices Act of 1977, as amended, or similar applicable Law, (d) has established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties, or (e) has made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

Section 4.23 Brokers. No broker, investment banker, financial advisor or other Person, other than as set forth on Section 4.23 of the Company Disclosure Letter, the fees and expenses of which will be paid by the Company, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or any of its Affiliates. The Company has furnished to Parent a true and complete copy of any Contract between the Company and any Person identified on Section 4.23 of the Company Disclosure Letter pursuant to which such Person could be entitled to any payment from the Company relating to the transactions contemplated hereby.

Section 4.24 Disclosure Documents. The information relating to the Company and its Subsidiaries and stockholders that is provided by or on behalf of the Company for inclusion in the Proxy Statement or any other filing with the SEC in connection herewith will not, (i) in the case of the Proxy Statement, at the time the Proxy Statement or any amendment or supplement thereto is first mailed to the stockholders of Parent and at the time of the Parent Stockholder Meeting and (ii) in the case of any other filing with the SEC in connection herewith, at the time such filing is made, contain any untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

Section 4.25 No Other Representations and Warranties. Except for the representations and warranties contained in Article V, the Company acknowledges and agrees that none of Parent, Intermediate Parent, Intermediate, Merger Sub or any other Person on behalf of Parent, Intermediate Parent, Intermediate or Merger Sub makes any other express or implied representation or warranty whatsoever, and specifically (but without limiting the generality of the foregoing) that none of Parent, its Subsidiaries or any other Person on behalf of Parent, Intermediate Parent, Intermediate or Merger Sub makes any representation or warranty with respect to any projections or forecasts delivered or made available to the Company or any of its Representatives of future revenues, results of operations (or any component thereof), cash flows or financial condition (or any component thereof) of Parent (including any such projections or forecasts made available to the Company and Representatives in certain "data rooms" or management presentations in expectation of the transactions contemplated by this Agreement), and the Company has not relied on any such information or any representation or warranty not set forth in Article V.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PARENT, INTERMEDIATE PARENT, INTERMEDIATE AND MERGER SUB

Except (a) as disclosed in the Parent SEC Documents at least three Business Days prior to the date of this Agreement and that is reasonably apparent on the face of such disclosure to be applicable to the representation and warranty set forth herein (other than any disclosures contained or referenced therein solely under the captions “Risk Factors,” “Forward-Looking Statements,” “Quantitative and Qualitative Disclosures About Market Risk,” and any other disclosures contained or referenced therein of information, factors, or risks that are predictive, cautionary, or forward-looking in nature); or (b) as set forth in the corresponding section or subsection of the disclosure letter delivered by Parent to the Company immediately prior to the execution of this Agreement (the “**Parent Disclosure Letter**”) (it being agreed that the disclosure of any information in a particular section or subsection of the Parent Disclosure Letter shall be deemed disclosure of such information with respect to any other section or subsection of this Agreement to which the relevance of such information is readily apparent on its face), each of Parent, Intermediate Parent, Intermediate and Merger Sub represent and warrant to the Company as follows (the term “Parent” shall include any Subsidiaries of Parent, *mutatis mutandis*, except where context dictates otherwise):

Section 5.1 Organization, Standing and Power.

(a) Each of Parent, Intermediate Parent, Intermediate and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation. Each of Parent, Intermediate Parent, Intermediate and Merger Sub (x) has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted and (y) is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership, leasing or operation of its properties makes such qualification or licensing necessary, except in the case of clause (y), where the failure to be so qualified or licensed or in good standing, individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect. For purposes of this Agreement, “**Parent Material Adverse Effect**” means any event, change, circumstance, occurrence, effect or state of facts that is or would reasonably be expected to be materially adverse to the business, assets, liabilities, financial condition, or results of operations of Parent; provided, however, that Parent Material Adverse Effect shall not include any event, change, circumstance, occurrence, effect or state of facts to the extent resulting from (1) changes or conditions generally affecting the industries in which Parent operates, or the economy or the financial, debt, banking, capital, credit or securities markets, in the United States, including effects on such industries, economy or markets resulting from any regulatory and political conditions or developments in general, (2) the outbreak or escalation of war or acts of terrorism or any natural disasters, acts of God or comparable events, epidemic, pandemic or disease outbreak (including the COVID-19 virus) or any worsening of the foregoing, or any declaration of martial law, quarantine or similar directive, policy or guidance or Law or other action by any Governmental Entity in response thereto, (3) changes in Law or GAAP, or the interpretation or enforcement thereof, (4) the public announcement of this Agreement, (5) any specific action taken (or omitted to be taken) by Parent at or with the express written consent of the Company or required by or expressly permitted by the terms of this Agreement, (6) a change in the stock price or trading volume of Parent Common Stock or the suspension of trading in or delisting of Parent’s securities on Nasdaq (provided that any facts or circumstances causing such failure may be considered to the extent not otherwise excluded by the other provisions hereof) or (7) any failure to meet internal or other estimates, predictions, projections or forecasts (provided that any facts or circumstances causing such failure may be considered to the extent not otherwise excluded by the other provisions hereof); provided, that, with respect to clauses (1), (2) and (3), the impact of such event, change, circumstance, occurrence, effect or state of facts is not disproportionately adverse to Parent, as compared to other participants in the industries in which Parent operates.

(b) Parent has previously made available to the Company true and complete copies of the Certificate of Incorporation and Bylaws of each of Parent, Intermediate Parent, Intermediate and Merger Sub, in each case, as amended to the date of this Agreement, and each as so delivered is in full force and effect. None of Parent, Intermediate Parent, Intermediate or Merger Sub is in violation of any provision of their respective Certificate of Incorporation or Bylaws.

(c) Except with respect to the extent relating to the transactions contemplated by this Agreement or any other strategic alternatives, or in draft form, and except as may be redacted to preserve a privilege (including attorney-client privilege), Parent has made available to the Company true and complete copies of the minutes of all meetings of Parent's stockholders, the Parent Board, and each committee of the Parent Board held since January 1, 2024.

Section 5.2 Capital Stock.

(a) The authorized capital stock of Parent consists of 36,000,000 shares of Parent Common Stock and 75,000,000 shares of preferred stock, par value \$0.001 per share, of Parent (the "**Parent Preferred Stock**"). As of the close of business on August 12, 2025 (the "**Measurement Date**"), (i) 15,373,266 shares of Parent Common Stock (excluding treasury shares) were issued and outstanding, all of which were validly issued, fully paid and nonassessable (which term means that no further sums are required to be paid by the holders thereof in connection with the issue of such shares) and were free of preemptive rights, (ii) no shares of Parent Common Stock were held in treasury, (iii) an aggregate of 1,186 shares of Parent Common Stock were subject to the exercise of outstanding options to purchase shares of Parent Common Stock issued pursuant to the Parent Equity Plans (the "**Parent Options**"), (iv) an aggregate of 5,657,445 shares of Parent Common Stock were subject to the exercise of outstanding warrants to purchase shares of Parent Common Stock; (v) no shares of Parent Preferred Stock were issued and outstanding or held in treasury, and (vi) an aggregate of 83,279 shares of restricted stock or restricted stock units of Parent outstanding that were issued pursuant to the Parent Equity Plans. As of the close of business on the Measurement Date, except as set forth on Section 5.2(a) to the Parent Disclosure Letter, Parent does not have any outstanding bonds, debentures, notes or other obligations having the right to vote (or convertible into, or exchangeable or exercisable for, securities having the right to vote) with the stockholders of Parent on any matter. Except as set forth above in this Section 5.2(a) and except for changes since the close of business on the Measurement Date resulting from the exercise of any options as described above, as of the Measurement Date, there are no outstanding (A) shares of capital stock or other voting securities or equity interests of Parent, (B) securities of Parent convertible into or exchangeable or exercisable for shares of capital stock of Parent or other voting securities or equity interests of Parent, (C) stock appreciation rights, "phantom" stock rights, performance units, interests in or rights to the ownership or earnings of Parent or other equity equivalent or equity-based awards or rights, (D) subscriptions, options, warrants, calls, commitments, Contracts or other rights to acquire from Parent, or obligations of Parent to issue, any shares of capital stock of Parent, voting securities, equity interests or securities convertible into or exchangeable or exercisable for capital stock or other voting securities or equity interests of Parent or rights or interests described in the preceding clause (C), or (E) obligations of Parent to repurchase, redeem or otherwise acquire any such securities or to issue, grant, deliver or sell, or cause to be issued, granted, delivered or sold, any such securities. There are no stockholder agreements, voting trusts or other agreements or understandings to which Parent is a party or of which Parent has knowledge with respect to the holding, voting, registration, redemption, repurchase or disposition of, or that restricts the transfer of, any capital stock or other voting securities or equity interests of Parent.

(b) Section 5.2(b) of the Parent Disclosure Letter sets forth a correct and complete list of all outstanding Parent Options as of the Measurement Date, including, with respect to each Parent Option: (i) the name of the holder, (ii) number of shares of Parent Common Stock subject to each Parent Option, (iii) the number of such shares that are vested or unvested, (iv) the grant date, (v) the vesting commencement date, (vi) the vesting schedule (and the terms of any acceleration thereof), (vii) the exercise price per share, (viii) whether such Parent Option was designated an “incentive stock option” under Section 422 of the Code, (ix) the post-termination exercise period, and (x) whether such Parent Option was granted with an “early exercise” right in favor of the holder.

(c) The authorized capital stock of Intermediate Parent consists of 1,000 shares of common stock, par value \$0.001 per share, of which 1,000 shares are issued and outstanding, all of which shares are beneficially owned by Parent.

(d) The authorized capital stock of Intermediate consists of 1,000 shares of common stock, par value \$0.001 per share, of which 1,000 shares are issued and outstanding, all of which shares are beneficially owned by Intermediate Parent.

(e) The authorized capital stock of Merger Sub consists of 1,000 shares of common stock, par value \$0.001 per share, of which 1,000 shares are issued and outstanding, all of which shares are beneficially owned by Intermediate.

(f) The shares of Parent Common Stock to be issued pursuant to the Merger will be duly authorized, validly issued, fully paid and nonassessable and not subject to any preemptive rights.

Section 5.3 Subsidiaries. Other than as set forth on Section 5.3 of the Parent Disclosure Letter, Parent does not own, directly or indirectly, any equity, membership interest, partnership interest, joint venture interest, or other equity or voting interest in, or any interest convertible into, exercisable or exchangeable for any of the foregoing, nor is it under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution, guarantee, credit enhancement or other investment in, or assume any liability or obligation of, any Person. Merger Sub was formed solely for the purpose of engaging in the Merger and the other transactions contemplated hereby and has engaged in no business other than in connection with the transactions contemplated by this Agreement.

Section 5.4 Authority.

(a) Each of Parent, Intermediate Parent, Intermediate and Merger Sub has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the other transactions contemplated hereby, including the issuance of the shares of Parent Common Stock as Merger Consideration (the “**Parent Common Stock Issuance**”). The execution, delivery and performance of this Agreement by Parent, Intermediate Parent, Intermediate and Merger Sub and the consummation by Parent, Intermediate Parent, Intermediate and Merger Sub of the Merger and the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Parent, Intermediate Parent, Intermediate and Merger Sub and no other corporate proceedings on the part of Parent, Intermediate Parent, Intermediate or Merger Sub are necessary to approve and consummate the Merger and the other transactions contemplated hereby, subject to (i) obtaining the approval of the Agreement and the transactions contemplated hereby, including the Merger, the Nasdaq Issuance Proposal, the Equity Plan Proposal, the Charter Amendment Proposal, and the Reverse Stock Split Proposal, by the requisite voting power required to approve such proposals (collectively, the “**Parent Stockholder Approval**”) and (ii) the approval of this Agreement by Parent as the sole stockholder of Intermediate Parent, Intermediate Parent as the sole stockholder of Intermediate and Intermediate as the sole stockholder of Merger Sub. This Agreement has been duly executed and delivered by Parent, Intermediate Parent, Intermediate and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a valid and binding obligation of each of Parent, Intermediate Parent, Intermediate and Merger Sub, enforceable against each of Parent, Intermediate Parent, Intermediate and Merger Sub in accordance with its terms (except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar Laws affecting the enforcement of creditors’ rights generally or by general principles of equity).

(b) The Parent Board, at a meeting duly called and held at which all directors of Parent were present, duly adopted resolutions (i) determining that the terms of this Agreement, the Merger and the other transactions contemplated hereby are fair to, advisable and in the best interests of Parent and its stockholders, (ii) approving and declaring advisable this Agreement and the transactions contemplated hereby, including the Merger, the issuance of shares of Parent Common Stock to the debtholder(s) and the stockholders of the Company pursuant to the terms of this Agreement, (iii) determining to submit the Parent Board Recommendation to the stockholders of Parent, and (iv) determining to approve and recommend the Parent Stockholder Proposals to the stockholders of Parent as promptly as practicable after the form of the Charter Amendment Proposal and the terms of the Nasdaq Reverse Stock Split are mutually agreed to by Parent and the Company. The board of directors of each of Intermediate Parent, Intermediate and Merger Sub (by unanimous written consent) has: (x) determined that the transactions contemplated hereby are fair to, advisable, and in the best interests of Intermediate Parent, Intermediate and Merger Sub and their respective sole stockholders, (y) deemed advisable and approved this Agreement and the transactions contemplated hereby and (z) determined to recommend, upon the terms and subject to the conditions set forth in this Agreement, that the stockholder of Intermediate Parent, Intermediate and Merger Sub vote to adopt this Agreement and thereby the transactions contemplated hereby.

(c) The Parent Stockholder Approval is the only vote of the holders of any class or series of the Parent Common Stock or other securities required in connection with the consummation of the Merger and the other transactions contemplated hereby, including the Parent Common Stock Issuance. Other than the Parent Stockholder Approval, no vote of the holders of any class or series of the Parent Common Stock or other securities is required in connection with the consummation of any of the transactions contemplated hereby to be consummated by Parent.

Section 5.5 No Conflict; Consents and Approvals.

(a) The execution, delivery and performance of this Agreement by each of Parent, Intermediate Parent, Intermediate and Merger Sub does not, and the consummation of the Merger and the other transactions contemplated hereby and compliance by each of Parent, Intermediate Parent, Intermediate and Merger Sub with the provisions hereof will not, conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of, or result in, termination, cancellation, modification or acceleration of any obligation or to the loss of a benefit under, or result in the creation of any Lien in or upon any of the properties, assets or rights of Parent, Intermediate Parent, Intermediate or Merger Sub under, or give rise to any increased, additional, accelerated or guaranteed rights or entitlements under, or require any consent, waiver or approval of any Person pursuant to, any provision of (i) the Certificate of Incorporation or Bylaws of Parent, Intermediate Parent, Intermediate or Merger Sub, (ii) any Contract to which Parent, Intermediate Parent, Intermediate or Merger Sub is a party by which Parent, Intermediate Parent, Intermediate, Merger Sub or any of their respective properties or assets may be bound, or (iii) subject to the governmental filings and other matters referred to in Section 5.5(b), any material Law or any rule or regulation of Nasdaq applicable to Parent, Intermediate Parent, Intermediate or Merger Sub or by which Parent, Intermediate Parent, Intermediate, Merger Sub or any of their respective properties or assets may be bound, except as, in the case of clauses (ii) and (iii), as individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect.

(b) No consent, approval, order or authorization of, or registration, declaration, filing with or notice to, any Governmental Entity is required by or with respect to Parent, Intermediate Parent, Intermediate or Merger Sub in connection with the execution, delivery and performance of this Agreement by Parent, Intermediate Parent, Intermediate or Merger Sub or the consummation by Parent, Intermediate Parent, Intermediate or Merger Sub of the Merger and the other transactions contemplated hereby or compliance with the provisions hereof, except for (i) the filing with the SEC of such reports under Section 13(a) or 15(d) of the Exchange Act, as may be required in connection with this Agreement and the transactions contemplated hereby, (ii) such other filings and reports as may be required pursuant to the applicable requirements of the Securities Act, the Exchange Act and any other applicable state or federal securities, takeover and “blue sky” laws, (iii) the filing of the Certificate of Merger with the Delaware Secretary of State as required by the DGCL, (iv) any filings required under the rules and regulations of Nasdaq and (v) such consents, approvals, orders, authorizations, registrations, declarations, filings or notices the failure of which to be obtained or made, individually or in the aggregate, have not had and would not reasonably be expected to be material to Parent.

Section 5.6 SEC Reports; Financial Statements.

(a) Parent has filed with or furnished to the SEC on a timely basis true and complete copies of all forms, reports, schedules, statements and other documents required to be filed with or furnished to the SEC by Parent since January 1, 2025 (all such documents, together with all exhibits and schedules to the foregoing materials and all information incorporated therein by reference, the “**Parent SEC Documents**”). As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing), the Parent SEC Documents complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002 (the “**Sarbanes-Oxley Act**”), as the case may be, including, in each case, the rules and regulations promulgated thereunder, and none of the Parent SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents (i) have been prepared in a manner consistent with the books and records of Parent, (ii) have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto), (iii) comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto and (iv) fairly present in all material respects the consolidated financial position of Parent as of the dates thereof and their respective consolidated statements of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments that were not, or are not expected to be, material in amount), all in accordance with GAAP and the applicable rules and regulations promulgated by the SEC. Since January 1, 2025, Parent has not made any change in the accounting practices or policies applied in the preparation of its financial statements, except as required by GAAP, SEC rule, comment, or policy or applicable Law. The books and records of Parent have been, and are being, maintained in all material respects in accordance with GAAP (to the extent applicable) and any other applicable legal and accounting requirements and reflect only actual transactions.

(c) Parent has established and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Such disclosure controls and procedures are designed to ensure that information relating to Parent required to be disclosed in Parent's periodic and current reports under the Exchange Act, is made known to Parent's principal executive officer and principal financial officer by others within those entities to allow timely decisions regarding required disclosures as required under the Exchange Act. The principal executive officer and principal financial officer of Parent have evaluated the effectiveness of Parent's disclosure controls and procedures and, to the extent required by applicable Law, presented in any applicable Parent SEC Document that is a report on Form 10-K or Form 10-Q, or any amendment thereto, its conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by such report or amendment based on such evaluation.

(d) Parent has established and maintains a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which is effective in providing reasonable assurance regarding the reliability of Parent's financial reporting and the preparation of Parent's financial statements for external purposes in accordance with GAAP. Parent has disclosed, based on its most recent evaluation of Parent's internal control over financial reporting prior to the date hereof, to Parent's auditors and audit committee (i) any significant deficiencies and material weaknesses in the design or operation of Parent's internal control over financial reporting which are reasonably likely to adversely affect Parent's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in Parent's internal control over financial reporting.

(e) Since January 1, 2025, (i) neither Parent nor, to the knowledge of Parent, any of its directors, officers, employees, auditors, accountants or representatives has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Parent or its internal accounting controls, including any material complaint, allegation, assertion or claim that Parent has engaged in questionable accounting or auditing practices and (ii) no attorney representing Parent, whether or not employed by Parent, has reported evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by Parent or any of its officers, directors, employees or agents to the Parent Board or any committee thereof or to any director or officer of Parent.

(f) As of the date of this Agreement, there are no outstanding or unresolved comments in the comment letters received from the SEC staff with respect to the Parent SEC Documents. To the knowledge of Parent as of the date of this Agreement, none of the Parent SEC Documents is subject to ongoing review or outstanding SEC comment or investigation.

(g) Parent is not a party to, or has any commitment to become a party to, any joint venture, off balance sheet partnership or any similar Contract (including any Contract or arrangement relating to any transaction or relationship between or among Parent, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand, or any “off balance sheet arrangements” (as defined in Item 303(a) of Regulation S K under the Exchange Act)), where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, Parent in Parent’s published financial statements or other Parent SEC Documents.

(h) Parent is in compliance in all material respects with (i) the provisions of the Sarbanes-Oxley Act and (ii) the rules and regulations of Nasdaq, in each case, that are applicable to Parent.

(i) Parent is not currently a “shell company” as defined in Section 12b-2 of the Exchange Act.

Section 5.7 No Undisclosed Liabilities. Parent does not have any liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, known or unknown, whether due or to become due and whether or not required to be recorded or reflected on a balance sheet under GAAP, except (a) to the extent specifically and adequately accrued or reserved against in the audited balance sheet of Parent as at December 31, 2024 included in the Annual Report on Form 10-K filed by Parent with the SEC on March 31, 2025, as amended by Amendment No. 1 on Form 10-K/A, filed with the SEC on April 30, 2025 (without giving effect to any amendment thereto filed on or after the date hereof) and (b) for liabilities and obligations incurred in the ordinary course of business consistent with past practice (none of which is a liability for a breach or default under any contract, breach of warranty, tort, infringement, misappropriation or violation of law) since December 31, 2024 that are not individually or in the aggregate material to Parent.

Section 5.8 Absence of Certain Changes or Events. Except as set forth in Section 5.8 of the Parent Disclosure Letter, since December 31, 2024, (i) except in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby, Parent has conducted their business only in the ordinary course; (ii) there has not been any change, event or development or prospective change, event or development that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect; and (iii) Parent has not:

(a) (i) declared, set aside or paid any dividends on, or made any other distributions (whether in cash, stock or property) in respect of, any of its capital stock or other equity interests, (ii) purchased, redeemed or otherwise acquired shares of capital stock or other equity interests of Parent or any options, warrants, or rights to acquire any such shares or other equity interests, or (iii) split, combined, reclassified or otherwise amended the terms of any of its capital stock or other equity interests or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or other equity interests;

(b) amended or otherwise changed, or authorized or proposed to amend or otherwise changed, its certificate of incorporation or by-laws (or similar organizational documents);

(c) adopted or entered into a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or reorganization; or

(d) changed its financial or Tax accounting methods, principles or practices, except insofar as may have been required by a change in GAAP or applicable Law, or revalued any of its material assets.

Section 5.9 Litigation. Except as set forth on Section 5.9 of the Parent Disclosure Letter there is no Action (or basis therefor) pending or, to the knowledge of Parent, threatened against or affecting Parent, any of its properties or assets, or any present or former officer, director or employee of Parent in such individual's capacity as such, other than any Action that (a) does not involve an amount in controversy in excess of \$250,000 and (b) does not seek injunctive or other non-monetary relief. Neither Parent nor any of its properties or assets is subject to any outstanding judgment, order, injunction, rule or decree of any Governmental Entity. There is no Action pending or, to the knowledge of Parent, threatened seeking to prevent, hinder, modify, delay or challenge the Merger or any of the other transactions contemplated by this Agreement.

Section 5.10 Compliance with Law. Parent is and has been in compliance in all material respects with all Laws applicable to its businesses, operations, properties or assets. Parent has not received, since January 1, 2023, a notice or other written communication alleging or relating to a possible material violation of any Law applicable to its business, operations, properties, assets or products. Parent has in effect all material Permits of all Governmental Entities necessary and required for it to own, lease or operate its properties and assets and to carry on its business and operations as now conducted, and there has occurred no violation of, default (with or without notice or lapse of time or both) under or event giving to others any right of revocation, non-renewal, adverse modification or cancellation of, with or without notice or lapse of time or both, any such Permit, nor would any such revocation, non-renewal, adverse modification or cancellation result from the consummation of the transactions contemplated hereby.

Section 5.11 Benefit Plans.

(a) “**Parent Plans**” means each “employee benefit plan” (within the meaning of section 3(3) of ERISA, whether or not subject to ERISA), “multiemployer plans” (within the meaning of ERISA section 3(37)), and all stock purchase, stock option, phantom stock or other equity-based plan, severance, employment, collective bargaining, change-in-control, fringe benefit, bonus, incentive, deferred compensation, supplemental retirement, health, life, or disability insurance, dependent care, employee loans, vacation and all other employee benefit and compensation plans, agreements, programs, policies or other arrangements, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise), whether formal or informal, written or oral, sponsored, maintained, or contributed to (or required to be contributed to), by Parent for the benefit of any current or former employee, or other individual service provider of Parent (or such employee or other individual service provider’s dependents) or with respect to which Parent has any present or future liability or obligation (contingent or otherwise) or with respect to which it is otherwise bound. Section 5.11(a) of the Parent Disclosure Letter contains a true and complete list of each Parent Plan, other than (i) any employment offer letter or other employment agreement that is terminable “at-will” or following a statutory notice period and does not provide for severance, retention, change of control, transaction or similar bonuses, (ii) any individual consulting agreement that is terminable by Parent without advance notice and without any payment (other than payment for services performed prior to termination of the agreement), and (iii) any individual option or other equity award grant notices and agreements that do not materially deviate from the representative forms of such grant notices and agreements made available to the Company. Parent has provided or made available to the Company a current, accurate and complete copy of each Parent Plan required to be listed on Section 5.11(a) of the Parent Disclosure Letter, or if such Parent Plan is not in written form, a written summary of all of the material terms of such Parent Plan. With respect to each Parent Plan required to be listed on Section 5.11(a) of the Parent Disclosure Letter, Parent has furnished or made available to the Company a current, accurate and complete copy of, to the extent applicable: (i) all documents embodying or governing such Parent Plan and any related trust agreement or other funding instrument, (ii) the most recent determination letter of the IRS, (iii) any summary plan description, summary of material modifications, and other similar material written communications (or a written description of any material oral communications) to the employees of Parent concerning the extent of the benefits provided under a Parent Plan, (iv) all non-routine correspondence to and from any governmental agency, and (v) for the three most recent years and as applicable (A) the Form 5500 and attached schedules, (B) audited financial statements (C) nondiscrimination testing results and (D) actuarial valuation reports.

(b) Neither Parent nor any member of its Controlled Group has ever sponsored, maintained, contributed to or been required to contribute to or incurred any liability (contingent or otherwise) with respect to: (i) a “multiemployer plan” (within the meaning of ERISA section 3(37)), (ii) a Pension Plan that is subject to Title IV of ERISA or Section 412 of the Code, (iii) a Pension Plan which is a “multiple employer plan” as defined in Section 413 of the Code, or (iv) a “funded welfare plan” within the meaning of Section 419 of the Code.

(c) With respect to the Parent Plans:

(i) each Parent Plan complies in all material respects with its terms and materially complies in form and in operation with the applicable provisions of ERISA and the Code and all other applicable legal requirements;

(ii) each Parent Plan intended to be qualified under Section 401(a) of the Code has received a favorable determination, advisory and/or opinion letter, as applicable, from the IRS that it is so qualified and nothing has occurred to the knowledge of Parent since the date of such letter that would reasonably be expected to cause the loss of the sponsor's ability to rely upon such letter, and nothing has occurred to the knowledge of Parent that would reasonably be expected to result in the loss of the qualified status of such Parent Plan;

(iii) there is no Action (including any investigation, audit or other administrative proceeding) by the Department of Labor, the PBGC, the IRS or any other Governmental Entity or by any plan participant or beneficiary pending, or to the knowledge of Parent, threatened, relating to the Parent Plans, any fiduciaries thereof with respect to their duties to Parent Plans or the assets of any of the trusts under any of Parent Plans (other than routine claims for benefits);

(iv) none of the Parent Plans currently provides, or reflects or represents any liability to provide post-termination or retiree welfare benefits to any person for any reason, except as may be required by COBRA, and none of Parent nor any members of its Controlled Group has any liability to provide post-termination or retiree welfare benefits to any person or ever represented, promised or contracted to any employee or former employee of Parent (either individually or to Parent employees as a group) or any other person that such employee(s) or other person would be provided with post-termination or retiree welfare benefits, except to the extent required by statute or except with respect to a contractual obligation to reimburse any premiums such person may pay in order to obtain health coverage under COBRA;

(v) each Parent Plan is subject exclusively to United States Law; and

(vi) the execution and delivery of this Agreement, the Parent Stockholder Approval, and the consummation of the Merger will not, either alone or in combination with any other event, (A) entitle any current or former employee, officer, director or consultant of Parent to severance pay, unemployment compensation or any other similar termination payment, or (B) accelerate the time of payment or vesting, or increase the amount of or otherwise enhance any benefit due any such employee, officer, director or consultant.

(d) Parent is not a party to any agreement, contract, arrangement or plan (including any Parent Plan) that may reasonably be expected to result, separately or in the aggregate, in connection with the transactions contemplated by this Agreement (either alone or in combination with any other events), in the payment of any "parachute payments" within the meaning of Section 280G of the Code. There is no agreement, plan or other arrangement to which Parent is a party or by which Parent is otherwise bound to compensate any person in respect of Taxes or other liabilities incurred with respect to Section 409A or 4999 of the Code. Parent has obtained and delivered to the Company a fully executed parachute payment cutback agreement in the form attached hereto as Exhibit C (the "**Parachute Payment Cutback Agreement**") from each Person who may be, with respect to Parent or any member of its Controlled Group, a "disqualified individual" within the meaning of Section 280G of the Code and the regulations promulgated thereunder (a "**Parent Disqualified Individual**").

(e) Section 5.11(e) of the Parent Disclosure Letter contains a true and complete list of each Parent Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law). Each Parent Plan that is a “nonqualified deferred compensation plan” within the meaning of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law) complies in both form and operation in all material respects with the requirements of Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law) and all applicable IRS guidance issued with respect thereto (and has so complied for the entire period during which Section 409A of the Code has applied to such Parent Plan) so that no amount paid or payable pursuant to any such Parent Plan is subject to any additional Tax or interest under Section 409A of the Code (or any comparable or similar provision of state, local, or foreign Law). All Parent Restricted Stock Awards are exempt from application of Section 409A of the Code.

(f) No Parent Plan provides major or supplemental medical health or long-term disability benefits that are not fully insured through an insurance contract.

Section 5.12 Labor and Employment Matters.

(a) Parent is and for the past three (3) years has been in compliance in all material respects with all applicable Laws relating to labor and employment, including those relating to employment practices, terms and conditions of employment, collective bargaining, disability, immigration, health and safety, wages, hours and benefits, non-discrimination in employment, workers’ compensation, the collection and payment of withholding and/or payroll Taxes and similar Taxes, unemployment compensation, equal employment opportunity, discrimination, harassment, employee and contractor classification, information privacy and security, and continuation coverage with respect to group health plans. During the preceding three years, there has not been, and as of the date of this Agreement there is not pending or, to the knowledge of Parent, threatened, any labor dispute, work stoppage, labor strike or lockout against Parent by employees.

(b) No employee of Parent is covered by an effective or pending collective bargaining agreement or similar labor agreement. To the knowledge of Parent, there has not been any activity on behalf of any labor union, labor organization or similar employee group to organize any employees of Parent. There are no (i) unfair labor practice charges or complaints against Parent pending before the National Labor Relations Board or any other labor relations tribunal or authority and to the knowledge of Parent no such representations, claims or petitions are threatened, (ii) representations, claims or petitions pending before the National Labor Relations Board or any other labor relations tribunal or authority or (iii) grievances or pending arbitration proceedings against Parent that arose out of or under any collective bargaining agreement.

(c) To the knowledge of Parent, except as set forth on Section 5.12(c), no current key employee or officer of Parent intends, or is expected, to terminate such individual’s employment relationship with Parent in connection with or as a result of the transactions contemplated hereby.

(d) For the three (3) years immediately preceding the date hereof, (i) Parent has not effectuated a “plant closing” (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility, (ii) there has not occurred a “mass layoff” (as defined in the WARN Act) in connection with Parent affecting any site of employment or one or more facilities or operating units within any site of employment or facility and (iii) Parent has not engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state, local or foreign Law. Except as would not be material, Parent currently properly classifies and for the past three (3) years immediately preceding the date hereof has properly classified (A) its employees as exempt or non-exempt in accordance with applicable overtime Laws, and (B) its independent contractors in accordance with applicable Law.

(e) Except as set forth on Section 5.12(e) of the Parent Disclosure Letter, with respect to any current or former employee, officer, consultant or other service provider of Parent, there have been no Actions against Parent pending, or to Parent’s knowledge, threatened to be brought or filed, in connection with the employment or engagement of any current or former employee, officer, consultant or other service provider of Parent, including, without limitation, any claim relating to employment discrimination, harassment, retaliation, equal pay, employment classification or any other employment related matter arising under applicable Laws.

(f) Except as set forth on Section 5.12(f) of the Parent Disclosure Letter or with respect to any Parent Plan (which subject is addressed in Section 5.11 above), the execution of this Agreement and the consummation of the transactions set forth in or contemplated by this Agreement will not result in any breach or violation of, or cause any payment to be made under, any applicable Laws respecting labor and employment or any collective bargaining agreement to which Parent is a party.

(g) For the three (3) years immediately preceding the date hereof, (i) no allegations of workplace sexual harassment, discrimination or other misconduct have been made, initiated, filed or, to the knowledge of Parent, threatened against Parent or any of its current or former directors, officers or senior level management employees (in each case, in their capacity as such), (ii) to the knowledge of Parent, no incidents of any such workplace sexual harassment, discrimination or other misconduct have occurred, and (iii) Parent has not entered into any settlement agreement related to allegations of sexual harassment, discrimination or other misconduct by any of their directors, officers or employees described in clause (i) hereof or any independent contractor.

(h) Parent, Intermediate Parent, Intermediate and Merger Sub are, and since January 1, 2023 have been, in compliance with all contractual obligations to any other Person not to solicit or not to encourage any employee, independent contractor, advisor, consultant, contractor, vendor, director, customer, or business partner of such Person to terminate or alter in any way their relationship, or not commence a relationship, with that Person. Parent, Intermediate Parent, Intermediate and Merger Sub have not, since January 1, 2023, encouraged, aided and abetted, nor facilitated any other Person’s breach of a covenant not to solicit or a covenant not to compete.

Section 5.13 Environmental Matters.

(a) Except as, individually or in the aggregate, is not and would not reasonably be expected to be material to Parent, (i) Parent has conducted its businesses in compliance with all, and have not violated any, applicable Environmental Laws; (ii) Parent has obtained all Permits of all Governmental Entities and any other Person that are required under any Environmental Law; (iii) there has been no release of any Hazardous Substance by Parent or any other Person in any manner that has given or would reasonably be expected to give rise to any remedial or investigative obligation, corrective action requirement or liability of Parent under applicable Environmental Laws; (iv) Parent has not received any claims, notices, demand letters or requests for information (except for such claims, notices, demand letters or requests for information the subject matter of which has been resolved prior to the date of this Agreement) from any federal, state, local, foreign or provincial Governmental Entity or any other Person asserting that Parent is in violation of, or liable under, any Environmental Law; (v) no Hazardous Substance has been disposed of, arranged to be disposed of, released or transported in violation of any applicable Environmental Law, or in a manner that has given rise to, or that would reasonably be expected to give rise to, any liability under any Environmental Law, in each case, on, at, under or from any current or former properties or facilities owned or operated by Parent or as a result of any operations or activities of Parent at any location and, to the knowledge of Parent, Hazardous Substances are not otherwise present at or about any such properties or facilities in amount or condition that has resulted in or would reasonably be expected to result in liability to Parent under any Environmental Law; and (vi) neither Parent nor any of its properties or facilities are subject to, or are threatened to become subject to, any liabilities relating to any suit, settlement, court order, administrative order, regulatory requirement, judgment or claim asserted or arising under any Environmental Law or any agreement relating to environmental liabilities.

(b) Parent has made available all environmental site assessments, environmental audits and other material environmental documents in Parent's possession or control relating to Parent or any of Parent's current or former properties or facilities.

Section 5.14 Taxes.

(a) Parent has (i) filed all material income and other material Tax Returns required to be filed by it (taking into account any applicable extensions thereof) and all such Tax Returns are true, accurate and complete in all material respects; and (ii) paid in full (or caused to be timely paid in full) all material Taxes that are required to be paid by it, whether or not such Taxes were shown as due on such Tax Returns.

(b) All material Taxes not yet due and payable by Parent as of the date of the balance sheet included in the financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents have been, in all respects, properly accrued in accordance with GAAP on the financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents, and such financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents reflect an adequate reserve (in accordance with GAAP) for all material Taxes accrued but unpaid by Parent through the date of such financial statements. Since the date of financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents, Parent has not incurred, individually or in the aggregate, any liability for Taxes outside the ordinary course of business consistent with past practice.

(c) Parent has not executed any waiver of any statute of limitations on, or extended the period for the assessment or collection of, any amount of Tax, in each case that has not since expired.

(d) No material Tax Action with respect to Taxes or any Tax Return of Parent are presently in progress or have been asserted, threatened or proposed in writing and to the knowledge of Parent, no such Tax Action is being contemplated. No deficiencies or claims for a material amount of Taxes have been claimed, proposed, assessed or asserted in writing against Parent by a Governmental Entity, other than any such claim, proposal, assessment or assertion that has been satisfied by payment in full, settled or withdrawn.

(e) Subject to exceptions as would not be material, Parent has timely withheld all Taxes required to have been withheld from payments made (or deemed made) to its employees, independent contractors, creditors, shareholders and other third parties and, to the extent required, such Taxes have been timely paid to the relevant Governmental Entity.

(f) Parent has not engaged in a “listed transaction” as set forth in Treasury Regulations § 1.6011-4(b)(2).

(g) Parent (i) is not a party to or bound by, or has any liability pursuant to, any Tax sharing, allocation, indemnification or similar agreement or obligation other than any Ordinary Course Agreement; (ii) is not or has not been a member of a group (other than a group the common parent of which is Parent) filing a consolidated, combined, affiliated, unitary or similar income Tax Return; and (iii) has no liability for the Taxes of any Person (other than Parent) pursuant to Treasury Regulations § 1.1502-6 (or any similar provision of state, local or non-United States Law) as a transferee or successor, by Contract (other than any Ordinary Course Agreement), or otherwise by operation of Law.

(h) No private letter rulings, technical advice memoranda, or similar material agreements or rulings have been requested, entered into or issued by any Governmental Entity with respect to Parent which rulings remain in effect.

(i) Parent will not be required to include any material amount of income in, or exclude any material amount of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) a change in, or use of improper, method of accounting requested or initiated on or prior to the Closing Date, (ii) a “closing agreement” as described in Section 7121 of the Code (or any similar provision of Law) executed on or prior to the Closing Date, (iii) an installment sale or open transaction disposition made on or prior to the Closing Date, (iv) any prepaid amount received or deferred revenue accrued on or prior to the Closing Date, other than in respect of such amounts reflected in the balance sheet included in the financial statements (including the related notes and schedules thereto) included (or incorporated by reference) in the Parent SEC Documents, or received in the ordinary course of business since the date of such balance sheet, (v) to Parent’s knowledge, an intercompany transaction or excess loss amount described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law), (vi) an election under Section 965 of the Code, or (vii) the application of Sections 951 or 951A of the Code with respect to income earned or recognized or payments received prior to the Closing.

(j) There are no liens for Taxes upon any of the assets of Parent other than Liens described in clause (i) of the definition of Permitted Parent Liens.

(k) Parent has not distributed stock of another Person or has had its stock distributed by another Person, in a transaction (or series of transactions) that was purported or intended to be governed in whole or in part by Sections 355 or 361 of the Code.

(l) Parent has not been a United States real property holding corporation, as defined in Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(m) No material claim has been made in writing by any Governmental Entity in a jurisdiction where Parent does not currently file a Tax Return of a certain type or pay Taxes of a certain type that Parent is or may be subject to taxation by such jurisdiction of such type.

For purposes of this Section 5.14, where the context permits, each reference to Parent shall include a reference to any person for whose Taxes Parent is liable under applicable law.

Section 5.15 Contracts.

(a) Except for any Parent Plans (which are the subject of Section 5.11) and except as set forth in the Parent SEC Documents publicly available prior to the date of this Agreement, Parent is not a party to or bound by any “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K under the Securities Act) (all such contracts including those set forth in Section 5.15(b) of the Parent Disclosure Letter, “**Parent Material Contracts**”).

(b) Section 5.15(b) of the Parent Disclosure Letter lists the following contracts, which for the purposes of this Agreement shall be considered Parent Material Contracts:

(i) each Contract relating to any agreement of indemnification (not entered into in the ordinary course of business) or guaranty;

(ii) each Contract containing (A) any covenant limiting the freedom of Parent or the Surviving Company to engage in any line of business or compete with any Person, or limiting the development, manufacture or distribution of the Surviving Company’s products or services (B) any most-favored pricing arrangement, (C) any exclusivity provision in favor of a third party or (D) any non-solicitation provision applicable to Parent;

(iii) each Contract relating to capital expenditures and requiring payments after the date of this Agreement in excess of \$1,000,000 pursuant to its express terms and not cancelable without penalty;

(iv) each Contract relating to the disposition or acquisition of material assets or any ownership interest in any Person;

(v) each Contract relating to any mortgages, indentures, loans, notes or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit or creating any material Liens with respect to any assets of Parent or any loans or debt obligations with officers or directors of Parent or otherwise involving Parent Indebtedness;

(vi) each Contract requiring payment by or to Parent after the date of this Agreement in excess of \$1,000,000 pursuant to its express terms relating to: (A) any Contract involving a dealer, distributor, joint marketing, alliance, joint venture, cooperation, research and/or development, material transfer, services (including technical writing and consulting), manufacturing, supply, distribution or other agreement relating to the research, development, testing, labeling, manufacturing, marketing, commercialization, or distribution of any product, technology or service, or any Contract pursuant to which any Intellectual Property is developed by or for Parent or (B) any Contract to license any patent, trademark registration, service mark registration, trade name or copyright registration to or from any third party to research, develop, test, label, manufacture, market, or produce any product, service or technology of Parent or any Contract to sell, distribute or commercialize any products or services of Parent;

(vii) each Contract with any Person, including any financial advisor, broker, finder, investment banker or other Person, providing advisory services to Parent in connection with the transactions contemplated hereby or which contains any tail or right of first refusal currently in effect or that will remain in effect following Closing;

(viii) each Contract relating to leases of real properties with respect to which Parent directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by Parent; and

(ix) each Contract to which Parent is a party or by which any of its assets and properties is currently bound, which involves annual obligations of payment by, or annual payments to, Parent in excess of \$1,000,000.

(c) Each Parent Material Contract is valid and binding on Parent, and to the knowledge of Parent, each other party thereto, and is in full force and effect and enforceable in accordance with its terms; (ii) Parent, and, to the knowledge of Parent, each other party thereto, has performed all material obligations required to be performed by it under each Parent Material Contract; and (iii) there is no material default under any Parent Material Contract by Parent or, to the knowledge of Parent, any other party thereto, and no event or condition has occurred that constitutes, or, after notice or lapse of time or both, would constitute, a material default on the part of Parent or, to the knowledge of Parent, any other party thereto under any such Parent Material Contract, nor has Parent received any notice of any such material default, event or condition. Parent has made available to the Company true and complete copies of all Parent Material Contracts, including all amendments thereto. Except as set forth in Section 5.15(c) of the Parent Disclosure Letter, there are no Parent Material Contracts that are not in written form. No Person is renegotiating, or has a right pursuant to the terms of any Parent Material Contract to change, any material amount paid or payable to Parent under any Parent Material Contract or any other material term or provision of any Parent Material Contract.

Section 5.16 Insurance. Parent is covered by valid and currently effective insurance policies issued in favor of Parent that are customary and adequate for companies of similar size in the industries and locations in which Parent operates. Parent has made available true and complete copies of all material insurance policies issued in favor of Parent, or pursuant to which Parent is a named insured or otherwise a beneficiary, as well as any historic incurrence-based policies still in force. With respect to each such insurance policy, (a) such policy is in full force and effect and all premiums due thereon have been paid, (b) as of the date of this Agreement, Parent has not received written notice that it is in breach or default, or that it has not taken any action or failed to take any action which (with or without notice or lapse of time, or both) would constitute such a breach or default, or would permit termination or modification of, any such policy and (c) to the knowledge of Parent, no insurer issuing any such policy has been declared insolvent or placed in receivership, conservatorship or liquidation. To the knowledge of Parent, no cancellation or termination of any such policy will result from the consummation of the transactions contemplated hereby.

Section 5.17 Properties.

(a) Parent has good and valid title to, or in the case of leased property and leased tangible assets, a valid leasehold interest in, all of its real properties and tangible assets that are necessary for Parent to conduct its businesses as currently conducted free and clear of all Liens other than the Permitted Parent Liens. There are no outstanding options, rights of first refusal, rights of first offer, or similar rights in favor of any third party to purchase, lease, or otherwise acquire any interest in any such real property. Except as would not be material to Parent, the tangible personal property currently used in the operation of the business of Parent and all buildings, structures, and improvements located on the real property are in good working order (reasonable wear and tear excepted).

(b) Parent has complied with the terms of all leases to which it is a party, and all such leases are in full force and effect, except for any such noncompliance or failure to be in full force and effect that, individually or in the aggregate, is not or would not be material to Parent. Parent enjoys peaceful and undisturbed possession under all such leases, except for any such failure to do so that, individually or in the aggregate, is not or would not be material to Parent. There is no existing default or event of default (or event which with notice or lapse of time or both would constitute a default) by Parent or its Subsidiaries or, to the knowledge of Parent, by any other party under such lease, and Parent has not received or delivered any written notice alleging such default.

(c) Except as set forth on Section 5.17(c) of the Parent Disclosure Letter, Parent does not own any real property and has never owned any real property, nor is Parent party to any agreement to purchase or sell any real property. Section 5.17(c) of the Parent Disclosure Letter sets forth a list of all real property currently leased, subleased or licensed by or from Parent or otherwise used or occupied by Parent (the “**Parent Facilities**”), the name of the lessor, licensor, sublessor, master lessor and/or lessee, the date and term of the lease, license, sublease or other occupancy right and each amendment thereto, the size of the premises, the amount and type of any security deposit, letter of credit or similar instrument required and delivered thereunder, all current and future rent (including, without limitation, base rent, additional rent, operating expenses, common area charges, taxes and utility costs) payable thereunder and an estimate of any costs that may be required by Parent to comply with the surrender and restoration provisions of the lease, license, sublease or other occupancy right, and all renewal or extension options, expansion rights, rights of first refusal, and rights of first offer applicable to such lease, license, sublease or other occupancy right. Parent has provided the Company with true, correct and complete copies of all leases, lease guaranties, licenses, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Parent Facilities, including all notices exercising any extension or expansion rights thereunder and amendments, terminations, consents, subordination, non-disturbance and attornment agreements, estoppel certificates and other modifications thereof (the “**Parent Lease Agreements**”). All such Parent Lease Agreements are in full force and effect and are valid and enforceable in accordance with their respective terms. There is not, under any Parent Lease Agreements, any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default) of Parent, or to Parent’s knowledge, any other party thereto. The execution and delivery of this Agreement by Parent does not, and the consummation of the transactions contemplated hereby will not, result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or materially impair the rights of Parent or alter the rights or obligations of the sublessor, lessor or licensor under, or give to others any rights of termination, amendment, acceleration or cancellation of any Parent Lease Agreements, or otherwise adversely affect the continued use and possession of the Parent Facilities for the conduct of business as presently conducted.

(d) Section 5.17(d) of the Parent Disclosure Letter sets forth a list of all subleases, licenses or other agreements for the use or occupancy by any other parties of the Parent Facilities (the “**Parent Subleased Premises**”), the name of the sublessee, licensee or other occupant, the date and term of the sublease, license or other occupancy right and each amendment thereto, the size of the subleased or licensed premises, the amount and type of any security deposit, letter of credit or similar instrument required and delivered thereunder and all current and future rent (including, without limitation, base rent, additional rent, operating expenses, common area charges, taxes and utility costs) payable by the sublessee, licensee or other occupant thereunder. Parent has provided the Company with true, correct and complete copies of all subleases, licenses, agreements for the subleasing, use or occupancy of, or otherwise granting a right in or relating to the Parent Subleased Premises, including all notices exercising any extension or expansion rights thereunder and amendments, terminations, consents, subordination, non-disturbance and attornment agreements, estoppel certificates and other modifications thereof (the “**Parent Sublease Agreements**”). All such Parent Sublease Agreements are in full force and effect and are valid and enforceable in accordance with their respective terms. There is not, under any Parent Sublease Agreements, any existing default or event of default (or event which with notice or lapse of time, or both, would constitute a default) of Parent, or to the knowledge of Parent, any other party thereto.

(e) The Parent Facilities are in good operating condition and repair. Parent is not required to pay for or perform (or reasonably expects to be required to pay for or perform) any material maintenance, repair or replacements obligations under any Parent Lease Agreement, including, without limitation, the payment for or performance of any alterations or improvements to cause the Parent Facilities to comply with applicable Law. To Parent’s knowledge, the Parent Facilities do not violate any Law relating to such property or operations thereon. Except as set forth on Section 5.17(e) of the Parent Disclosure Letter, (i) Parent is not party to any agreement or subject to any claim that may require the payment of any real estate brokerage commissions, (ii) Parent does not owe any commissions or other similar fees with respect to any of the Parent Facilities, Parent Lease Agreements or Parent Sublease Agreements, (iii) there are no pending or, to Parent’s knowledge, threatened condemnation, eminent domain, zoning change, or similar proceedings affecting any Parent Facility, and (iv) there are no unrecorded easements, covenants, licenses, or other restrictions that materially impair the current use of any Parent Facility.

(f) This Section 5.17 does not relate to Intellectual Property, which is the subject of Section 5.18.

Section 5.18 Intellectual Property.

(a) Section 5.18(a) of the Parent Disclosure Letter sets forth a true and complete list of all of the following that are owned by or licensed to Parent: (i) patents and patent applications; (ii) trademark registrations and applications; and (iii) material copyright registrations and applications ((i)-(iii), collectively, “**Parent Registered IP**”) and domain names. Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect (A) all of the Parent Registered IP owned by Parent, and with respect to Parent Registered IP not owned by Parent, to the knowledge of Parent, is subsisting, (B) any Parent Registered IP that is registered or issued is, to the knowledge of Parent, valid and enforceable, (C) as of the date of this Agreement, Parent has not received written notice that (x) any such Parent Registered IP is involved in any interference, reissue, derivation, reexamination, opposition, cancellation or similar proceeding contesting the validity, enforceability, claim construction, ownership or right to use, sell, offer for sale, license or dispose of any Parent Registered IP, or (y) any such action is threatened with respect to any of the Parent Registered IP, (D) all Parent Registered IP owned by Parent is owned exclusively by Parent, free and clear of any and all Liens (other than Permitted Parent Liens), and any Parent Registered IP not owned by Parent is, to the knowledge of Parent, free and clear of any and all Liens (other than Permitted Parent Liens), and (E) all patents or patent applications in the Parent Owned IP that are not Parent Registered IP are free and clear of any and all Liens (other than Permitted Parent Liens).

(b) Section 5.18(b) of the Parent Disclosure Letter accurately identifies (i) all Contracts pursuant to which any Intellectual Property is licensed to Parent (other than (A) any generally commercially available software and Intellectual Property associated with such software, in each case that is licensed on a non-exclusive basis to Parent, (B) any Intellectual Property licensed on a nonexclusive basis ancillary to the purchase or use of equipment, reagents or other materials, (C) any confidential information provided under confidentiality agreements and (D) agreements between Parent and its employees in Parent's standard form thereof).

(c) Section 5.18(c) of the Parent Disclosure Letter accurately identifies each Contract pursuant to which any Person has been granted any license (or option to license) under, or otherwise has received or acquired, any Parent Registered IP (other than (i) any confidential information provided under confidentiality agreements and (ii) any Parent Registered IP licensed to academic collaborators, suppliers or service providers for the sole purpose of enabling such academic collaborator, supplier or service providers to provide services for Company's benefit), in each case that is exercisable by such Person after the Closing Date.

(d) Parent has taken commercially reasonable measures to maintain the confidentiality of all information that constitutes or constituted a material Trade Secret of Parent, including requiring all Persons having access thereto to execute written non-disclosure agreements or other binding obligations to maintain confidentiality of such information.

(e) (i) To the knowledge of Parent, the conduct of the businesses of Parent, including the manufacture, marketing, offering for sale, sale, importation, use or intended use or other disposal of any product as currently sold or under development by Parent, has not, in the six (6) years immediately preceding the date hereof, misappropriated or diluted, and does not infringe, misappropriate or dilute, any Intellectual Property of any Person, (ii) Parent has not received any written notice or claim asserting or suggesting that any such infringement, misappropriation, or dilution is or may be occurring or has or may have occurred, and (iii) to the knowledge of Parent, no Person is infringing, misappropriating, or diluting any Parent Registered IP.

(f) Except as, individually or in the aggregate, has not had and would not reasonably be expected to have a Parent Material Adverse Effect, in the three (3) years immediately preceding the date hereof: (i) Parent has taken commercially reasonable steps designed to protect the confidentiality and security of the computer and information technology systems used by Parent (the "**Parent IT Systems**") and the information stored or contained therein or transmitted thereby, (ii) to the knowledge of Parent, there has been no unauthorized or improper use, loss, access, transmittal, modification or corruption of any such information in the possession or control of Parent.

(g) (i) In the three (3) years immediately preceding the date hereof, to the knowledge of Parent, Parent has complied in all material respects with all Laws relating to privacy and data protection applicable to the collection, retention, and use by Parent of Personal Information ("**Parent Privacy Laws**"), (ii) no claims by or before any Governmental Entity have been asserted or, to the knowledge of Parent, have been threatened in writing against Parent alleging a violation of any applicable Parent Privacy Laws, (iii) neither this Agreement nor the consummation of the transactions contemplated hereby will breach or otherwise violate any Parent Privacy Laws in any material respect, and (iv) Parent has taken commercially reasonable steps designed to protect any Personal Information collected, retained or used by Parent against unauthorized or improper use, loss, access or transmittal.

(h) To the knowledge of Parent, no government funding, facilities or resources of a university, college, other educational institution or research center or funding from third parties was used in the development of the Parent Registered IP, and no Governmental Entity, university, college, other educational institution or research center has, to the knowledge of Parent, any claim or right in or to such Parent Registered IP.

(i) Except as set forth on Section 5.18(i) of the Parent Disclosure Letter, the execution, delivery and performance by Parent of this Agreement, and the consummation of the transactions contemplated hereby, will not result in the loss of, or give rise to any right of any third party to terminate or modify any of Parent's rights or obligations under any agreement under which Parent grants to any Person, or any Person grants to Parent, a license or right under or with respect to any Intellectual Property that is material to any of the businesses of Parent, including any of the agreements listed in Section 5.18(b) or Section 5.18(c) of the Parent Disclosure Letter.

Section 5.19 Related Party Transactions. Since January 1, 2023 through the date of this Agreement, there have been no transactions, agreements, arrangements or understandings between Parent, on the one hand, and the Affiliates of Parent, on the other hand that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act and that have not been so disclosed in the Parent SEC Documents.

Section 5.20 Certain Payments. Neither Parent nor, to the knowledge of Parent, any of its directors, executives, representatives, agents or employees (a) has used or is using any corporate funds for any illegal contributions, gifts, entertainment or other unlawful expenses relating to political activity, (b) has used or is using any corporate funds for any direct or indirect unlawful payments to any foreign or domestic governmental officials or employees, (c) has violated or is violating any provision of the Foreign Corrupt Practices Act of 1977, as amended, or similar applicable Laws, (d) has established or maintained, or is maintaining, any unlawful fund of corporate monies or other properties, or (e) has made any bribe, unlawful rebate, payoff, influence payment, kickback or other unlawful payment of any nature.

Section 5.21 Brokers. No broker, investment banker, financial advisor or other Person, other than as set forth on Section 5.21 of the Parent Disclosure Letter (the "**Parent Financial Advisor**"), the fees and expenses of which will be paid by Parent, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent. Parent has furnished to Company a true and complete copy of any Contract between Parent and the Parent Financial Advisor pursuant to which Parent Financial Advisor could be entitled to any payment from Parent relating to the transactions contemplated hereby.

Section 5.22 Opinion of Financial Advisor. Parent Board has received the opinion of the Parent Financial Advisor to the effect that, as of the date of such opinion and based upon and subject to the various limitations, qualifications, assumptions, conditions and other matters set forth in such opinion, the issuance of the Merger Consideration by Parent pursuant to this Agreement is fair, from a financial point of view, to Parent. It is agreed and understood that such opinion is for the benefit of the Parent Board and may not be relied upon by the Company. Parent will make available to the Company a signed copy of such opinion for informational purposes only as soon as reasonably practicable following the date of this Agreement.

Section 5.23 State Takeover Statutes. No Takeover Laws or any similar anti-takeover provision in the Certificate of Incorporation or Bylaws of Parent applicable to Parent is, or at the Effective Time will be, applicable to this Agreement, the Merger, the Parent Common Stock Issuance, or any of the other transactions contemplated hereby. The Parent Board, the Intermediate Parent board, the Intermediate board and the Merger Sub board have taken and will take all actions necessary to ensure that the restrictions on business combinations set forth in Sections 78.411 through 78.444 of the Nevada Revised Statutes are, and will be, inapplicable to the execution, delivery and performance of this Agreement and to the consummation of the transactions contemplated by this Agreement.

Section 5.24 Disclosure Documents. The information relating to Parent, Intermediate Parent, Intermediate, Merger Sub and their Subsidiaries and stockholders that is provided by or on behalf of Parent, Intermediate Parent, Intermediate or Merger Sub for inclusion in the Proxy Statement or any other filing with the SEC in connection herewith will not, (i) in the case of the Proxy Statement, at the time the Proxy Statement or any amendment or supplement thereto is first mailed to the stockholders of Parent and at the time of the Parent Stockholder Meeting and (ii) in the case of any other filing with the SEC in connection herewith, at the time such filing is made, contain any untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

Section 5.25 No Other Representations or Warranties. Except for the representations and warranties contained in Article IV, each of Parent, Intermediate Parent, Intermediate and Merger Sub acknowledges and agrees that none of the Company or any other Person on behalf of the Company makes any other express or implied representation or warranty whatsoever, and specifically (but without limiting the generality of the foregoing) that none of the Company, its Subsidiaries or any other Person on behalf of the Company makes any representation or warranty with respect to any projections or forecasts delivered or made available to Parent, Intermediate Parent, Intermediate, Merger Sub or any of their respective Representatives of future revenues, results of operations (or any component thereof), cash flows or financial condition (or any component thereof) of the Company (including any such projections or forecasts made available to Parent, Intermediate Parent, Intermediate, Merger Sub or any of their respective Representatives in certain “*data rooms*” or management presentations in expectation of the transactions contemplated by this Agreement), and none of Parent, Intermediate Parent, Intermediate or Merger Sub has relied on any such information or any representation or warranty not set forth in Article IV.

ARTICLE VI COVENANTS

Section 6.1 Operation of Parent’s Business.

(a) Except as expressly contemplated or permitted by this Agreement, as required by applicable Law or unless the Company shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the period commencing on the date of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article IX and the Effective Time (the “*Pre-Closing Period*”), Parent shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to conduct its business and operations in the ordinary course of business and in material compliance with the applicable Law and the requirements of all Contracts that constitute Parent Material Contracts.

(b) Except as expressly contemplated or permitted by this Agreement, as required by applicable Law or unless the Company shall otherwise consent in writing (which may be withheld in the sole discretion of the Company), during the Pre-Closing Period, Parent shall take the actions set forth in Section 6.1(b) of the Parent Disclosure Letter.

(c) Except (w) as expressly contemplated or permitted by this Agreement or the Convertible Financing, (x) as set forth in Section 6.1(c) of the Parent Disclosure Letter, (y) as required by applicable Law or (z) with the prior written consent of the Company (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, Parent shall not, nor shall it cause or permit any of its Subsidiaries to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities (except for shares of Parent Common Stock from terminated employees, directors or consultants of Parent in accordance with agreements in effect on the date of this Agreement providing for the repurchase of shares at no more than the purchase price thereof in connection with any termination of services to Parent or any of its Subsidiaries);

(ii) sell, issue, grant, pledge or otherwise dispose of or encumber or authorize the issuance of: (A) any capital stock or other security (except for Parent Common Stock issued upon the valid exercise or settlement of outstanding Parent Options or Parent Restricted Stock Awards as applicable), (B) any option, restricted stock, restricted stock unit, warrant or right to acquire any capital stock or any other security or (C) any instrument convertible into or exchangeable for any capital stock or other security;

(iii) except as required to give effect to anything in contemplation of the Closing, including the Nasdaq Reverse Stock Split, amend any of its organizational documents, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction except, for the avoidance of doubt, the transactions contemplated hereby;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other entity or enter into a joint venture with any other entity;

(v) (A) lend money to any Person (other than routine advances to employees of Parent or its Subsidiaries in the ordinary course of business and consistent with past practice), (B) incur or guarantee any indebtedness for borrowed money, (C) guarantee any debt securities of others or (D) make any capital expenditure or commitment, in each case, in excess of \$500,000, in aggregate amount;

(vi) other than as required by applicable Law or the terms of any Parent Plan in effect as of the date of this Agreement: (A) adopt, establish or enter into any Parent Plan, including, for the avoidance of doubt, any equity award plans, (B) cause or permit any Parent Plan to be amended other than as required by law or in order to make amendments for the purposes of Section 409A of the Code, (C) pay any bonus or make any profit-sharing or similar payment to (except with respect to obligations in place on the date of this Agreement pursuant to any Parent Plan), or increase the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its employees, directors or consultants (other than general pay increases, including in connection with promotions, made in the ordinary course of business consistent with past practice), (D) increase the severance or change of control benefits offered to any current or new employees, directors or consultants, (E) hire any employee that would be entitled to receive annual base cash compensation in excess of \$125,000 or more or terminate any employee that would be material to Parent, (F) promote any officers or employees, except in connection with Parent's or its Subsidiaries' annual or quarterly compensation review cycle or as the result of the termination or resignation of any officer or employee, or (G) enter into any collective bargaining agreement or recognize or certify any labor union, labor organization, works council or group of employees as the bargaining representative for any employees of Parent or its Subsidiaries;

(vii) other than in the ordinary course of business and other than in connection with the liquidation of obsolete inventory and obsolete fixed assets no longer being used by Parent or its Subsidiaries for its core operations, acquire any material asset other than in the ordinary course or sell, lease, license or otherwise irrevocably dispose of any of its assets or properties, or grant any Lien (other than a Permitted Parent Lien) with respect to such assets or properties;

(viii) make (other than consistent with past practice), change or revoke any material Tax election; file any material amendment to any Tax Return; settle or compromise any material Tax claim; waive or extend any statute of limitations in respect of a period within which an assessment or reassessment of material Taxes may be issued (other than any extension pursuant to an extension to file any Tax Return); enter into any “*closing agreement*” as described in Section 7121 of the Code (or any similar Law) with any Governmental Entity; or adopt or change any material accounting method in respect of Taxes;

(ix) waive, settle or compromise any pending or threatened Action against Parent or any of its Subsidiaries;

(x) delay or fail to repay when due any material obligation, including accounts payable and accrued expenses, other than in the ordinary course of business and consistent with past practice;

(xi) forgive any loans to any Person, including its employees, officers, directors or Affiliates;

(xii) sell, assign, transfer, license, sublicense or otherwise dispose of any Parent Registered IP;

(xiii) terminate or modify in any material respect, or fail to exercise renewal rights with respect to, any material insurance policy;

(xiv) enter into, amend, terminate, or waive any material option or right under, any Parent Material Contract;

(xv) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or alter, amend, modify, exercise any extension or expansion right under or violate or terminate any of the terms of any Parent Lease Agreements or Parent Sublease Agreements;

(xvi) other than as required by Law, GAAP, or in response to any comment issued by the SEC, take any action to change accounting policies or procedures in any material respect;

(xvii) agree, resolve or commit to do any of the foregoing.

Nothing contained in this Agreement shall give the Company, directly or indirectly, the right to control or direct the operations of Parent prior to the Effective Time. Prior to the Effective Time, Parent shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

Section 6.2 Operation of Company's Business.

(a) Except as expressly contemplated or permitted by this Agreement, as required by applicable Law or unless Parent shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned), during the Pre-Closing Period, the Company shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to conduct its business and operations in the ordinary course of business and in material compliance with the applicable Law and the requirements of all Contracts that constitute Company Material Contracts.

(b) Except (i) as expressly contemplated or permitted by this Agreement or the Convertible Financing, (ii) as set forth in Section 6.2(b) of the Company Disclosure Letter, (iii) as required by applicable Law or (iv) with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), at all times during the Pre-Closing Period, the Company shall not, nor shall it cause or permit any of its Subsidiaries to, do any of the following:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of its capital stock or repurchase, redeem or otherwise reacquire any shares of its capital stock or other securities (except for shares of Company Capital Stock from terminated employees, directors or consultants of the Company in accordance with agreements in effect on the date of this Agreement providing for the repurchase of shares at no more than the purchase price thereof in connection with any termination of services to the Company or any of its Subsidiaries);

(ii) sell, issue, grant, pledge or otherwise dispose of or encumber or authorize the issuance of: (A) any capital stock or other security (except for Company Capital Stock issued upon the valid exercise or settlement of outstanding Company Options), (B) any option, restricted stock, restricted stock unit, warrant or right to acquire any capital stock or any other security or (C) any instrument convertible into or exchangeable for any capital stock or other security (other than the grant of Company Options under the Company Equity Incentive Plans in the ordinary course of business and consistent with past practice);

(iii) except as required to give effect to anything in contemplation of the Closing, amend any of its organizational documents, or effect or be a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction except, for the avoidance of doubt, the transactions contemplated hereby;

(iv) form any Subsidiary or acquire any equity interest or other interest in any other entity or enter into a joint venture with any other entity;

(v) (A) lend money to any Person (other than routine advances to employees of the Company or its Subsidiaries in the ordinary course of business and consistent with past practice, pursuant to Company Plans), (B) incur or guarantee any material indebtedness for borrowed money, (C) guarantee any debt securities of others, in each case of (A), (B) and (C), in excess of \$500,000, or (D) make any capital expenditures or commitments that are more than \$150,000 greater than the Company's forecasted capital expenditures;

(vi) other than in the ordinary course of business and other than in connection with the liquidation of obsolete inventory and obsolete fixed assets no longer being used by the Company or its Subsidiaries for its core operations, acquire any material asset or sell, lease, license or otherwise irrevocably dispose of any of its material assets or properties, or grant any Lien with respect to such assets or properties;

(vii) make (other than consistent with past practice), change or revoke any material Tax election; file any material amendment to any Tax Return; settle or compromise any material Tax claim; waive or extend any statute of limitations in respect of a period within which an assessment or reassessment of material Taxes may be issued (other than any extension pursuant to an extension to file any Tax Return); enter into any "closing agreement" as described in Section 7121 of the Code (or any similar Law) with any Governmental Entity; or adopt or change any material accounting method in respect of Taxes;

(viii) waive, settle or compromise any pending or threatened Action against the Company or any of its Subsidiaries, other than waivers, settlements or agreements (A) for an amount not in excess of \$250,000 in the aggregate (excluding amounts to be paid under existing insurance policies or renewals thereof) and (B) that do not impose any material restrictions on the operations or businesses of the Company, taken as a whole, or any equitable relief on, or the admission of wrongdoing by the Company or any of its Subsidiaries;

(ix) delay or fail to repay when due any material obligation, including accounts payable and accrued expenses, other than in the ordinary course of business and consistent with past practice;

(x) forgive any material loans to any Person, including its employees, officers, directors or Affiliates;

(xi) sell, assign, transfer, license, sublicense or otherwise dispose of any material Intellectual Property of the Company (other than in the ordinary course of business and consistent with past practice);

(xii) terminate or modify in any material respect, or fail to exercise renewal rights with respect to, any material insurance policy, in each case, without obtaining commercially reasonable alternatives; or

(xiii) agree, resolve or commit to do any of the foregoing.

Nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the operations of the Company prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete unilateral control and supervision over its business operations.

Section 6.3 Access and Investigation.

(a) Subject to the terms of the Confidentiality Agreement, which the parties agree will continue in full force following the date of this Agreement, during the Pre-Closing Period, upon reasonable notice, Parent, on the one hand, and the Company, on the other hand, shall and shall use commercially reasonable efforts to cause such party's Representatives to: (i) provide the other party and such other party's Representatives with reasonable access during normal business hours to such party's Representatives, personnel, property and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to such party and its Subsidiaries, (ii) provide the other party and such other party's Representatives with such copies of the existing books, records, Tax Returns, work papers, product data and other documents and information relating to such party and its Subsidiaries, and with such additional financial, operating and other data and information regarding such party and its Subsidiaries as the other party may reasonably request, (iii) permit the other party's officers and other employees to meet, upon reasonable notice and during normal business hours, with the chief financial officer and other officers and managers of such party responsible for such party's financial statements and the internal controls of such party to discuss such matters as the other party may deem necessary, and (iv) make available to the other party copies of any material notice, report or other document filed with or sent to or received from any Governmental Entity in connection with the transactions contemplated hereby. Any investigation conducted by either Parent or the Company pursuant to this Section 6.3 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the other party.

(b) Notwithstanding anything herein to the contrary in this Section 6.3, no access or examination contemplated by this Section 6.3 shall be permitted to the extent that it would require any party or its Subsidiaries (i) to waive the attorney-client privilege or attorney work product privilege, (ii) violate any applicable Law or (iii) breach such party's confidentiality obligations to a third party; provided, that such party or its Subsidiary (A) shall be entitled to withhold only such information that may not be provided without causing such violation or waiver, (B) shall provide to the other party all related information that may be provided without causing such violation or waiver (including, to the extent permitted, redacted versions of any such information), (C) shall enter into such effective and appropriate joint-defense agreements or other protective arrangements as may be reasonably requested by the other party in order that all such information may be provide to the other party without causing such violation or waiver, and (D) in the case of subsection (iii) above, upon the other party's reasonable request, such party shall use its reasonable efforts to obtain such third party's consent to permit such other party access to such information, subject to appropriate confidentiality protections.

Section 6.4 No Solicitation.

(a) Each of Parent and the Company agrees that, during the Pre-Closing Period, neither it nor any of its Subsidiaries shall, nor shall it or any of its Subsidiaries authorize any of its Representatives to, directly or indirectly: (i) solicit, initiate or knowingly encourage, induce or facilitate the communication, making, submission or announcement of any Acquisition Proposal or Acquisition Inquiry or take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry, (ii) furnish any nonpublic information regarding such party to any Person in connection with or in response to an Acquisition Proposal or Acquisition Inquiry, (iii) engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or Acquisition Inquiry, (iv) approve, endorse or recommend any Acquisition Proposal (subject to Section 7.2 and Section 7.3), (v) execute or enter into any letter of intent or any Contract contemplating or otherwise relating to any Acquisition Transaction, (vi) take any action that could reasonably be expected to lead to an Acquisition Proposal or Acquisition Inquiry or (vii) publicly propose to do any of the following; provided, however, that, notwithstanding anything contained in this Section 6.4 and subject to compliance with this Section 6.4, prior to obtaining the Parent Stockholder Approval, Parent may furnish nonpublic information regarding Parent and its Subsidiaries to, and enter into discussions or negotiations with, any Person in response to a bona fide written Acquisition Proposal by such Person which the Parent Board determines in good faith, after consultation with its financial advisors and outside legal counsel, constitutes, or is reasonably likely to result in, a Superior Offer (and is not withdrawn) if: (A) neither Parent nor any Representative of Parent shall have breached this Section 6.4 in any material respect, (B) the Parent Board concludes in good faith, after consulting with outside counsel, that the failure to take such action would reasonably be expected to constitute a violation of the Parent Board's fiduciary duties under applicable Law, (C) prior to initially furnishing any such nonpublic information to, or entering into discussions with, such Person, Parent receives from such Person an executed Acceptable Confidentiality Agreement and (D) prior to furnishing any such nonpublic information to such Person, Parent furnishes such nonpublic information to the Company (to the extent such information has not been previously furnished by Parent to the Company). Without limiting the generality of the foregoing, each party acknowledges and agrees that, in the event any Representative of such party takes any action that, if taken by such party, would constitute a breach of this Section 6.4 by such party, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 6.4 by such party for purposes of this Agreement.

(b) If any party or any Representative of such party receives in writing an Acquisition Proposal or Acquisition Inquiry at any time during the Pre-Closing Period, then such party shall promptly (and in no event later than one (1) Business Day after such party becomes aware of such Acquisition Proposal or Acquisition Inquiry) advise the other party in writing of such Acquisition Proposal or Acquisition Inquiry (including the terms thereof). Such party shall keep the other party reasonably informed with respect to the status and terms of any such Acquisition Proposal or Acquisition Inquiry and any material modification or material proposed modification thereto.

(c) Each party shall immediately cease and cause to be terminated any existing discussions, negotiations and communications with any Person that relate to any Acquisition Proposal or Acquisition Inquiry as of the date of this Agreement and request the destruction or return of any nonpublic information provided to such person as soon as reasonably practicable after the date of this Agreement.

Section 6.5 Notification of Certain Matters. During the Pre-Closing Period, each of the Company, on the one hand, and Parent, on the other hand, shall promptly notify the other (and, if in writing, furnish copies of) if any of the following occurs: (a) any notice or other communication is received from any Person alleging that the consent of such Person is or may be required in connection with any of the transactions contemplated hereby, (b) any Action against or involving or otherwise affecting such party or its Subsidiaries is commenced, or, to the knowledge of such party, threatened against such party or, to the knowledge of such party, any director, officer or employee of such party, (c) such party becomes aware of any inaccuracy in any representation or warranty made by such party in this Agreement or (d) the failure of such party to comply with any covenant or obligation of such party; in each case that could reasonably be expected to make the timely satisfaction of any of the conditions set forth in Article VIII, as applicable, impossible or materially less likely. No such notice shall be deemed to supplement or amend the Company Disclosure Letter or the Parent Disclosure Letter for the purpose of (x) determining the accuracy of any of the representations and warranties made by the Company in this Agreement or (y) determining whether any condition set forth in Article VIII has been satisfied. Any failure by either party to provide notice pursuant to this Section 6.5 shall not be deemed to be a breach for purposes of Section 8.2(b) and Section 8.3(b), as applicable, unless such failure to provide such notice was knowing and intentional.

ARTICLE VII ADDITIONAL AGREEMENTS

Section 7.1 Proxy Statement.

(a) As promptly as practicable after the date of this Agreement, Parent shall prepare and file with the SEC a preliminary Proxy Statement relating to the Parent Stockholder Meeting to be held in connection with the Merger. Parent shall use its reasonable best efforts to (i) cause the Proxy Statement to comply with the applicable rules and regulations promulgated by the SEC, (ii) respond promptly to any comments or requests of the SEC or its staff relating to the Proxy Statement, and (iii) following (A) confirmation by the SEC that it has no further comments or (B) expiration of the 10-day waiting period contemplated by Rule 14a-6(a) promulgated under the Exchange Act, Parent shall cause the Proxy Statement in definitive form to be mailed to the stockholders of Parent as promptly as practicable thereafter. Each of the parties shall reasonably cooperate with the other party and furnish all information concerning itself and their Affiliates, as applicable, to the other parties that is required by law to be include in the Proxy Statement as the other parties may reasonably request in connection with such actions and the preparation of the Proxy Statement.

(b) Parent covenants and agrees that the Proxy Statement (and the letter to stockholders, notice of meeting and form of proxy included therewith) will (i) comply as to form in all material respects with the requirements of applicable U.S. federal securities laws and the Nevada Revised Statutes, and (ii) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The Company covenants and agrees that the information supplied by or on behalf of the Company, concerning itself, to Parent for inclusion in the Proxy Statement (including the Company Interim Financial Statements) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make such information, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, neither party makes any covenant, representation or warranty with respect to statements made in the Proxy Statement (and the letter to stockholders, notice of meeting and form of proxy included therewith), if any, based on information provided by the other party or any of their Representatives regarding such other party or its Affiliates for inclusion therein.

(c) If at any time before the Effective Time (i) any party (A) becomes aware of any event or information that, pursuant to the Securities Act or the Exchange Act, should be disclosed in an amendment or supplement to the Proxy Statement, (B) receives notice of any SEC request for an amendment or supplement to the Proxy Statement or for additional information related thereto, or (C) receives SEC comments on the Proxy Statement, or (ii) the information provided in the Proxy Statement has become “stale” and new information should be disclosed in an amendment or supplement to the Proxy Statement; then, in each case such party, as the case may be, shall promptly inform the other parties thereof and shall cooperate with such other parties in filing such amendment or supplement with the SEC (and, if appropriate, in mailing such amendment or supplement to Parent’s stockholders) or otherwise addressing such SEC request or comments and each party shall use their commercially reasonable efforts to cause any such amendment to become effective, if required. Parent shall promptly notify the Company if it becomes aware of any order of the SEC related to the Proxy Statement, and shall promptly provide to the Company copies of all written correspondence between it or any of its Representatives, on the one hand, and the SEC or staff of the SEC, on the other hand, with respect to the Proxy Statement and all orders of the SEC relating to the Proxy Statement.

(d) The Company shall reasonably cooperate with Parent and provide, and cause its Representatives to provide, Parent and its Representatives, with all true, correct and complete information regarding the Company that is required by law to be included in the Proxy Statement or reasonably requested by Parent to be included in the Proxy Statement. Without limiting the Company’s obligations in Section 7.1(a), the Company will use commercially reasonable efforts to cause to be delivered to Parent a letter of the Company’s independent accounting firm, dated no more than two (2) Business Days before the date on which the Proxy Statement becomes effective (and reasonably satisfactory in form and substance to Parent), that is customary in scope and substance for letters delivered by independent public accountants in connection with proxy statements similar to the Proxy Statement.

(e) The Company and its legal counsel shall be given reasonable opportunity to review and comment on the Proxy Statement, including all amendments and supplements thereto, prior to the filing thereof with the SEC, and on the response to any comments of the SEC on the Proxy Statement, prior to the filing thereof with the SEC. No filing of, or amendment or supplement to, the Proxy Statement will be made by Parent, and no filing of, or amendment or supplement to, the Proxy Statement will be made by Parent, in each case, without the prior consent of the Company, which shall not be unreasonably withheld, conditioned or delayed.

(f) As promptly as reasonably practicable following the date of this Agreement, the Company will use commercially reasonable efforts to furnish to Parent audited financial statements for each of its fiscal years required to be included in the Proxy Statement (the “**Company Audited Financial Statements**”) and the Company will use commercially reasonable efforts to furnish to Parent unaudited interim financial statements for each interim period completed prior to Closing that would be required to be included in the Proxy Statement or any periodic report due prior to the Closing if the Company were subject to the periodic reporting requirements under the Securities Act or the Exchange Act (the “**Company Unaudited Interim Financial Statements**”). Each of the Company Audited Financial Statements and the Company Interim Financial Statements will be suitable for inclusion in the Proxy Statement and prepared in accordance with GAAP as applied on a consistent basis during the periods involved (except in each case as described in the notes thereto).

Section 7.2 Company Stockholder Approval.

(a) Following the execution of this Agreement, and in any event no later than two (2) Business Days thereafter, the Company shall solicit for approval the Company Stockholder Approval. Under no circumstances shall the Company assert that any other approval or consent is necessary by its stockholders to approve this Agreement and the transaction contemplated herein.

(b) Reasonably promptly following receipt of the Company Stockholder Approval, the Company shall prepare and mail a notice (the “**Stockholder Notice**”) to every stockholder of the Company that did not execute a written consent with respect to the Company Stockholder Approval. The Stockholder Notice shall (i) be a statement to the effect that the Company Board determined that the Merger is advisable in accordance with Section 251(b) of the DGCL and in the best interests of the stockholders of the Company and approved and adopted this Agreement, the Merger and the other transactions contemplated hereby and (ii) provide the stockholders of the Company to whom it is sent with notice of the availability of appraisal rights and notice of the actions taken in the Company Stockholder Approval, including the adoption and approval of this Agreement, the Merger and the other transactions contemplated hereby in accordance with Sections 228(e) and 262 of the DGCL and the organizational documents of the Company. Parent and its counsel shall be given reasonable opportunity to review and comment on all materials (including any amendments thereto) submitted to the stockholders of the Company in accordance with this Section 7.2(b).

(c) The Company agrees that, subject to Section 7.2(d): (i) the Company Board shall recommend that the Company’s stockholders vote to adopt and approve this Agreement and the transactions contemplated hereby and shall use commercially reasonable efforts to solicit such approval within the time set forth in Section 7.2(a) (the recommendation of the Company board that the Company’s stockholders vote to adopt and approve this Agreement being referred to as the “**Company Board Recommendation**”) and (ii) the Company Board Recommendation shall not be withdrawn or modified (and the Company Board shall not publicly propose to withdraw or modify the Company Board Recommendation) in a manner adverse to Parent, and no resolution by the Company Board or any committee thereof to withdraw or modify the Company Board Recommendation in manner adverse to Parent or to adopt, approve or recommend (or publicly adopt, approve or recommend) any Acquisition Proposal shall be adopted or proposed (the actions set forth in the foregoing clause (ii), collectively, a “**Company Board Adverse Recommendation Change**”).

(d) Notwithstanding anything to the contrary contained in Section 7.2(c), and subject to compliance with Section 6.4 and 7.2, at any time prior to the receipt of the Company Stockholder Approval, (i) the Company receives a bona fide written Superior Offer or (ii) as a result of a material development or change in circumstances (other than any such event, development or change to the extent related to (A) any Acquisition Proposal, Acquisition Inquiry, Acquisition Transaction or the consequences thereof or (B) the fact, in and of itself, that the Company meets or exceeds internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations) that affects the business, assets or operations of the Company that occurs or arises after the date of this Agreement (a “**Company Intervening Event**”), the Company Board may make a Company Board Adverse Recommendation Change if, but only if (i) in the case of a Superior Offer, following the receipt of and on account of such Superior Offer, (1) the Company Board determines in good faith, after consulting with outside legal counsel, that the failure to withhold, amend, withdraw or modify such recommendation would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law, (2) the Company has negotiated, and has caused its financial advisors and outside legal counsel to negotiate, during the Company Notice Period, with Parent in good faith to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Offer (to the extent Parent desires to negotiate) and (3) after Parent shall have delivered to the Company an irrevocable written offer to alter the terms or conditions of this Agreement during the Company Notice Period, the Company Board shall have determined in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify the Company Board Recommendation would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law (after taking into account such alterations of the terms and conditions of this Agreement); provided that (x) Parent receives written notice from the Company confirming that the Company Board has determined to change its recommendation at least four (4) Business Days in advance of the Company Board Adverse Recommendation Change (the “**Company Notice Period**”), which notice shall include a description in reasonable detail of the reasons for such Company Board Adverse Recommendation Change, and written copies of any relevant proposed transaction agreements with any party making a potential Superior Offer, (y) during any Company Notice Period, Parent shall be entitled to deliver to the Company one or more counterproposals to such Acquisition Proposal and the Company will, and cause its Representatives to, negotiate with Parent in good faith (to the extent Parent desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the applicable Acquisition Proposal ceases to constitute a Superior Offer and (z) in the event of any material amendment to any Superior Offer (including any revision in the amount, form or mix of consideration or percentage of the combined company that the Company’s stockholders would receive as a result of such potential Superior Offer), the Company shall be required to provide Parent with notice of such material amendment and the Company Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remain in the Company Notice Period following such notification during which the parties shall comply again with the requirements of this Section 7.2(d) and the Company Board shall not make a Company Board Adverse Recommendation Change prior to the end of such Company Notice Period as so extended (it being understood that there may be multiple extensions) or (ii) in the case of a Company Intervening Event, the Company promptly notifies Parent, in writing, within the Company Notice Period before making a Company Board Adverse Recommendation Change, which notice shall state expressly the material facts and circumstances related to the applicable Company Intervening Event and that the Company Board intends to make a Company Board Adverse Recommendation Change.

Section 7.3 Parent Stockholders' Meeting.

(a) Parent shall take all action necessary under applicable Law to call, give notice of and hold a meeting of the holders of Parent Common Stock (the “**Parent Stockholder Meeting**”) to present one or more proposals to the stockholders in order to obtain the Parent Stockholder Approval, including the Nasdaq Issuance Proposal, Equity Plan Proposal, the Charter Amendment Proposal, the Reverse Stock Split Proposal, and such other proposals that Parent and the Company may mutually agree upon (the “**Parent Stockholder Proposals**”). The Parent Stockholder Meeting shall be held as promptly as practicable following the earlier to occur of (i) confirmation by the SEC that it has no further comments on the preliminary Proxy Statement or (ii) expiration of the 10-day waiting period contemplated by Rule 14a-6(a) promulgated under the Exchange Act, and in any event no later than forty-five (45) days after such date. Parent shall take reasonable measures to ensure that all proxies solicited in connection with the Parent Stockholder Meeting are solicited in compliance with all applicable Law. Notwithstanding anything to the contrary contained herein, if on the date of the Parent Stockholder Meeting, or a date preceding the date on which the Parent Stockholder Meeting is scheduled, Parent reasonably believes that (A) it will not receive proxies sufficient to obtain the Parent Stockholder Approvals, whether or not a quorum would be present or (B) it will not have sufficient shares of Parent Common Stock represented (whether in person or by proxy) to constitute a quorum necessary to conduct the business of the Parent Stockholder Meeting, Parent may postpone or adjourn, or make one or more successive postponements or adjournments of, the Parent Stockholder Meeting as long as the date of the Parent Stockholder Meeting is not postponed or adjourned more than an aggregate of thirty (30) days in connection with any postponements or adjournments.

(b) Parent agrees that, subject to Section 7.3(c), (i) the Parent Board shall recommend that the holders of Parent Common Stock vote to approve the Parent Stockholder Proposals and shall solicit such approval within the timeframe set forth in Section 7.3(a) above and (ii) the Proxy Statement shall include a statement to the effect that the Parent Board recommends that Parent’s stockholders vote to approve the Parent Stockholder Proposals (the recommendation of the Parent Board being referred to as the “**Parent Board Recommendation**”) and (iii) the Parent Board Recommendation shall not be withheld, amended, withdrawn or modified (and the Parent Board shall not publicly propose to withhold, amend, withdraw or modify the Parent Board Recommendation) in a manner adverse to the Company, and no resolution by the Parent Board or any committee thereof to withdraw or modify the Parent Board Recommendation in a manner adverse to the Company or to adopt, approve or recommend (or publicly propose to adopt, approve or recommend) any Acquisition Proposal shall be adopted or proposed (the actions set forth in the foregoing clause (iii), collectively, a “**Parent Board Adverse Recommendation Change**”).

(c) Notwithstanding anything to the contrary contained in Section 7.3(b), and subject to compliance with Section 6.4 and Section 7.3, at any time prior to the approval of the Parent Stockholder Proposals by the Parent Stockholder Approval, (i) Parent receives a bona fide written Superior Offer or (ii) as a result of a material development or change in circumstances (other than any such event, development or change to the extent related to (A) any Acquisition Proposal, Acquisition Inquiry, Acquisition Transaction or the consequences thereof or (B) the fact, in and of itself, that Parent meets or exceeds internal budgets, plans or forecasts of its revenues, earnings or other financial performance or results of operations) that affects the business, assets or operations of Parent that occurs or arises after the date of this Agreement (a “**Parent Intervening Event**”), the Parent Board may make a Parent Board Adverse Recommendation Change if, but only if (i) in the case of a Superior Offer, following the receipt of and on account of such Superior Offer, (1) the Parent Board determines in good faith, after consulting with outside legal counsel, that the failure to withhold, amend, withdraw or modify such recommendation would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law, (2) Parent has negotiated, and has caused its financial advisors and outside legal counsel to negotiate, during the Parent Notice Period, with the Company in good faith to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal ceases to constitute a Superior Offer (to the extent the Company desires to negotiate) and (3) after the Company shall have delivered to Parent an irrevocable written offer to alter the terms or conditions of this Agreement during the Parent Notice Period, the Parent Board shall have determined in good faith, based on the advice of its outside legal counsel, that the failure to withhold, amend, withdraw or modify the Parent Board Recommendation would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law (after taking into account such alterations of the terms and conditions of this Agreement); provided that (x) the Company receives written notice from Parent confirming that the Parent Board has determined to change its recommendation at least four (4) Business Days in advance of the Parent Board Adverse Recommendation Change (the “**Parent Notice Period**”), which notice shall include a description in reasonable detail of the reasons for such Parent Board Adverse Recommendation Change, and written copies of any relevant proposed transaction agreements with any party making a potential Superior Offer, (y) during any Parent Notice Period, the Company shall be entitled to deliver to Parent one or more counterproposals to such Acquisition Proposal and Parent will, and cause its Representatives to, negotiate with the Company in good faith (to the extent the Company desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the applicable Acquisition Proposal ceases to constitute a Superior Offer and (z) in the event of any material amendment to any Superior Offer (including any revision in the amount, form or mix of consideration or percentage of the combined company that Parent’s stockholders would receive as a result of such potential Superior Offer), Parent shall be required to provide the Company with notice of such material amendment and the Parent Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remain in the Parent Notice Period following such notification during which the parties shall comply again with the requirements of this Section 7.3(c) and the Parent Board shall not make a Parent Board Adverse Recommendation Change prior to the end of such Parent Notice Period as so extended (it being understood that there may be multiple extensions) or (ii) in the case of a Parent Intervening Event, Parent promptly notifies the Company, in writing, within the Parent Notice Period before making a Parent Board Adverse Recommendation Change, which notice shall state expressly the material facts and circumstances related to the applicable Parent Intervening Event and that the Parent Board intends to make a Parent Board Adverse Recommendation Change.

(d) Parent's obligation to call, give notice of and hold the Parent Stockholder meeting in accordance with Section 7.3(a) shall not be limited to or otherwise affected by the commencement, disclosure, announcement or submission of any Superior Offer or Acquisition Proposal, or by any withdrawal or modification of the Parent Board Recommendation or any Parent Board Adverse Recommendation Change.

(e) Nothing contained in this Agreement shall prohibit Parent or the Parent Board from complying with Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act; provided however, that any disclosure made by Parent or the Parent Board pursuant to Rules 14d-9 and 14e-2(a) shall be limited to a statement that Parent is unable to take a position with respect to the bidder's tender offer unless the Parent Board determines in good faith, after consultation with its outside legal counsel, that such statement would reasonably be expected to be inconsistent with its fiduciary duties under applicable Law.

Section 7.4 Efforts; Regulatory Approvals; Transaction Litigation.

(a) The parties shall use commercially reasonable efforts to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, each party: (i) shall make all filings and other submissions (if any) and give all notices (if any) required to be made and given by such party in connection with the transactions contemplated hereby, (ii) shall use commercially reasonable efforts to obtain each consent (if any) reasonably required to be obtained (pursuant to any applicable law or Contract, or otherwise) by such party in connection with the transactions contemplated hereby or for such Contract to remain in full force and effect, (iii) shall use commercially reasonable efforts to lift any injunction prohibiting, or any other legal bar to, the transactions contemplated hereby and (iv) shall use commercially reasonable efforts to satisfy the conditions precedent to the consummations of this Agreement.

(b) Notwithstanding the generality of the foregoing, each party shall use commercially reasonable efforts to file or otherwise submit, as soon as practicable after the date of this Agreement, all applications, notices, reports and other documents reasonably required to be filed by such party with or otherwise submitted by such party to any Governmental Entity with respect to the transactions contemplated hereby, and to submit promptly any additional information requested by any such Governmental Entity.

(c) Without limiting the generality of the foregoing, Parent shall give the Company prompt (but no later than within two (2) Business Days) written notice of any litigation threatened or in writing against Parent and/or its directors relating to this Agreement or the transactions contemplated hereby (the "**Transaction Litigation**") (including by providing copies of all pleadings with respect thereto) and keep the Company reasonably informed with respect to the status thereof. Parent will (i) give the Company the opportunity to participate in the defense, settlement or prosecution of any Transaction Litigation (at the Company's sole expense), (ii) consult with the Company with respect to the defense, settlement and prosecution of any Transaction Litigation, (iii) consider in good faith the Company's advice with respect to such Transaction Litigation, and (iv) will not settle or consent or agree to settle or compromise any Transaction Litigation without the Company's prior written consent (which such consent shall not be unreasonably withheld, conditioned, or delayed).

Section 7.5 Indemnification, Exculpation and Insurance.

(a) From the Effective Time through the sixth (6th) anniversary of the date on which the Effective Time occurs, each of Parent and the Surviving Company shall indemnify and hold harmless each Person who is now, or has been at any time prior to the date hereof, or who becomes prior to the Effective Time, a director or officer of Parent or the Company or any of their Subsidiaries, respectively (the “***D&O Indemnified Parties***”), against all claims, losses, liabilities, damages, judgments, fines and reasonable fees, costs and expenses, including attorneys’ fees and disbursements, incurred in connection with any claim, Action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to the fact that the D&O Indemnified Party is or was a director or officer of Parent or of the Company, whether asserted or claimed prior to, at or after the Effective Time, in each case, to the fullest extent permitted under the DGCL and the Nevada Revised Statutes. Each D&O Indemnified Party will be entitled to advancement of expenses incurred in the defense of any such claim, action, suit, proceeding or investigation from each of Parent and the Surviving Company, jointly and severally, upon receipt by Parent or the Surviving Company from the D&O Indemnified Party of a request therefor; provided, that any such D&O Indemnified Party to whom expenses are advanced provides an undertaking to Parent, to the extent then required by the DGCL and the Nevada Revised Statutes, to repay such advances if it is ultimately determined that such D&O Indemnified Party is not entitled to indemnification.

(b) The provisions of the certificate of incorporation and bylaws of Parent with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers of Parent that are presently set forth in the certificate of incorporation and bylaws of Parent shall not be amended, modified or repealed for a period of six (6) years from the Effective Time in a manner that would adversely affect the rights thereunder of individuals who, at or prior to the Effective Time, were officers or directors of Parent, unless such modification is required by applicable Law. The certificate of incorporation and bylaws of the Surviving Company shall contain, and Parent shall cause the certificate of incorporation and bylaws of the Surviving Company to so contain, provisions no less favorable with respect to indemnification, advancement of expenses and exculpation of present and former directors and officers as those presently set forth in the certificate of incorporation and bylaws of Parent.

(c) From and after the Effective Time, (i) the Surviving Company shall fulfill and honor in all respects the obligations of the Company to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under the Company’s and its Subsidiaries’ organizational documents and pursuant to any indemnification agreements between the Company or its Subsidiaries and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time and (ii) Parent shall fulfill and honor in all respects the obligations of Parent to its D&O Indemnified Parties as of immediately prior to the Closing pursuant to any indemnification provisions under Parent’s and its Subsidiaries’ organizational documents and pursuant to any indemnification agreements between Parent or its Subsidiaries and such D&O Indemnified Parties, with respect to claims arising out of matters occurring at or prior to the Effective Time.

(d) From and after the Effective Time, Parent shall maintain directors' and officers' liability insurance policies, with an effective date as of the Closing Date, on commercially available terms and conditions and with coverage limits customary for U.S. public companies similarly situated to Parent. In addition, Parent shall purchase, prior to the Effective Time, a six-year prepaid "**D&O tail policy**" for the non-cancellable extension of the directors' and officers' liability coverage of Parent's existing directors' and officers' insurance policies for a claims reporting or discovery period of at least six years from and after the Effective Time with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under Parent's existing policies as of the date of this Agreement with respect to any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or any matter claimed against a director or officer of Parent by reason of him or her serving in such capacity that existed or occurred at or prior to the Effective Time (including in connection with this Agreement or the transactions contemplated hereby).

(e) From and after the Effective Time, Parent shall pay all expenses, including reasonable attorneys' fees, that are incurred by the persons referred to in this Section 7.5 in connection with their enforcement of the rights provided to such persons in this Section 7.5.

(f) The provisions of this Section 7.5 are intended to be in addition to the rights otherwise available to the current and former officers and directors of Parent and the Company by Law, charter, statute, bylaw or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the D&O Indemnified Parties, their heirs and their Representatives.

(g) In the event Parent or the Surviving Company or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving company or entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Company, as the case may be, shall succeed to the obligations set forth in this Section 7.5. Parent shall cause the Surviving Company to perform all of the obligations of the Surviving Company under this Section 7.5.

Section 7.6 Section 16 Matters. Prior to the Effective Time, each of Parent and the Company shall take all such steps as may be necessary or appropriate to cause the acquisitions of Parent Common Stock (including derivative securities with respect to such Parent Common Stock) resulting from the transactions contemplated by this Agreement by each individual who will become subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to Parent to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 7.7 Disclosure. The parties shall mutually agree to the text of any initial press release and Parent's Form 8-K announcing the execution and delivery of this Agreement. Without limiting any party's obligations under the Confidentiality Agreement, no party shall, and no party shall permit any of its Subsidiaries or any of its Representatives to, issue any press release or make any disclosure (to any customers or employees of such party, to the public or otherwise) regarding the transactions contemplated hereby unless (a) the other party shall have approved such press release or disclosure in writing, such approval not to be unreasonably conditioned, withheld or delayed; or (b) such party shall have determined in good faith, upon the advice of outside legal counsel, that such disclosure is required by applicable Law and, to the extent practicable, before such press release or disclosure is issued or made, such party advises the other party of, and consults with the other party regarding, the text of such press release or disclosure; provided, however, that each of the Company and Parent may make any public statement in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements made by the Company or Parent in compliance with this Section 7.7. Notwithstanding the foregoing, a party need not consult with any other parties pursuant to the specific terms of this Section 7.7 in connection with such portion of any press release, public statement or filing to be issued or made pursuant to Section 7.2(d), Section 7.3(c) or with respect to any Acquisition Proposal, Company Board Adverse Recommendation Change, Parent Board Adverse Recommendation Change, or pursuant to Section 7.3(e).

Section 7.8 Listing. At or prior to the Effective Time, Parent shall use its commercially reasonable efforts to (a) maintain its existing listing on Nasdaq until the Effective Time and to obtain approval of the listing of the combined corporation on Nasdaq, (b) to the extent required by the rules and regulations of Nasdaq, prepare and submit to Nasdaq a notification form for the listing of shares of Parent Common Stock to be issued in connection with the transactions contemplated hereby, and to cause such shares to be approved for listing (subject to official notice of issuance), and (c) to the extent required by Nasdaq Marketplace Rule 5110, prepare and file an initial listing application for the Parent Common Stock on Nasdaq (the “*Nasdaq Listing Application*”) and to cause such Nasdaq Listing Application to be conditionally approved prior to the Effective Time. Each party will reasonably promptly inform the other party of all verbal or written communications between Nasdaq and such party or its representatives. The parties will use commercially reasonable efforts to coordinate with respect to compliance with Nasdaq rules and regulations. The party not filing the Nasdaq Listing Application will cooperate with the other party as reasonably requested by such filing party with respect to the Nasdaq Listing Application and promptly furnish to such filing party all information concerning itself and its members that may be required or reasonably requested in connection with any action contemplated by this Section 7.8. The Company and Parent agree to equally bear and pay all Nasdaq fees associated with any action contemplated by this Section 7.8.

Section 7.9 Tax Matters.

(a) The parties intend that (i) the exchange of Company Indebtedness for the Company Indebtedness Merger Consideration and (ii) the exchange of Company Capital Stock for the Company Capital Stock Merger Consideration, in each case, be treated as taxable exchanges governed by Section 1001 of the Code and shall treat the Merger as such for all U.S. federal (and applicable state and local) income Tax purposes.

(b) All transfer, documentary, sales, use, stamp, registration, excise, recording, registration value added and other such similar Taxes and fees (including any penalties and interest) that become payable in connection with or by reason of the execution of this Agreement and the transactions contemplated hereby shall be borne and paid equally by Parent and the Company. Unless otherwise required by applicable law, Parent shall timely file any Tax Return or other document with respect to such Taxes or fees (and the Company shall reasonably cooperate with respect thereto as necessary).

Section 7.10 Directors and Officers. Until successors are duly elected or appointed and qualified in accordance with applicable Law, the parties shall use commercially reasonable efforts to take all necessary actions so that the Persons determined in accordance with Section 2.6(c) and 2.6(d) are elected or appointed, as applicable, to the positions of officers and directors of Parent, Intermediate Parent, Intermediate and the Surviving Company, as set forth therein, to serve in such positions effective as of the Effective Time.

Section 7.11 Termination of Certain Agreements and Rights. Except as set forth on Section 7.11 of the Parent Disclosure Letter, each of Parent and the Company shall use commercially reasonable efforts to cause any stockholder agreements, voting agreements, registration rights agreements, co-sale agreements and any other similar Contracts between either Parent or the Company and any holders of Parent Common Stock or Company Capital Stock, respectively, including any such Contract granting any Person investor rights, rights of first refusal, registration rights or director registration rights (collectively, the “*Investor Agreements*”), to be terminated immediately prior to the Effective Time.

Section 7.12 Obligations of Intermediate Parent, Intermediate and Merger Sub. Parent will take all action necessary to cause each of Intermediate Parent, Intermediate and Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

Section 7.13 Allocation Certificate. The Company will prepare and deliver to Parent at least two (2) Business Days prior to the Closing Date a certificate signed by an officer of the Company in a form reasonably acceptable to Parent setting forth (as of immediately prior to the Effective Time) (a) each holder of the Company Capital Stock and Company Indebtedness, (b) such holder’s name and address, (c) the number or percentage and type of the Company Capital Stock and Company Indebtedness held as of the Closing Date for each such holder, and (d) the number of shares of Parent Common Stock to be issued to such holder pursuant to this Agreement in respect of the Company Capital Stock and Company Indebtedness held by such holder as of immediately prior to the Effective Time (the “*Allocation Certificate*”).

Section 7.14 Treatment of Parent Equity Plans.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Intermediate Parent, Intermediate, Merger Sub, or any other Person, each Parent Option that is outstanding and unexercised immediately prior to the Effective Time shall automatically be terminated and cancelled without the payment of any consideration therefor, including any present or future right to receive any portion of the Merger Consideration.

(b) Each share of restricted Parent Common Stock, each restricted stock unit relating to shares of Parent Common Stock, each performance share of Parent Common Stock, and each performance unit relating to shares of Parent Common Stock, whether vested or unvested, that was granted pursuant to a Parent Equity Plan, and is outstanding immediately prior to the Effective Time, shall vest (to the extent not yet vested) with (to the extent applicable) performance deemed achieved at the greater of target or actual level effective as of immediately prior to the Effective Time.

(c) Parent shall, prior to the Effective Time, take all actions necessary or desirable in connection with the treatment of outstanding awards under the Parent Equity Plans contemplated by this Section 7.14.

Section 7.15 Legends.

(a) The shares of Parent Common Stock issued pursuant to the terms of this Agreement will be issued in a transaction exempt from registration under the Securities Act by reason of Section 4(a)(2) thereof and/or Regulation D promulgated under the Securities Act and may not be re-offered or resold other than in conformity with the registration requirements of the Securities Act and such other applicable rules and regulations or pursuant to an exemption therefrom. Until the resale of the shares of Parent Common Stock issuable to the Company's debtholders and/or stockholders, as applicable, has become registered under the Securities Act, or otherwise transferable pursuant to an exemption from such registration otherwise required thereunder, the shares of Parent Common Stock issued pursuant to this Agreement shall be characterized as "restricted securities" under the Securities Act and, if certificated, shall bear the following legend (or if held in book entry form, will be noted with a similar restriction):

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS REGISTERED UNDER THE ACT OR UNLESS AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE ACT IS AVAILABLE."

(b) Parent agrees to cooperate in a timely manner with the holders of Registrable Securities to remove any restrictive legends or similar transfer instructions from the Registrable Securities upon the registration of the Registrable Securities or in the event that the Registrable Securities are otherwise transferable pursuant to an exemption from registration otherwise required thereunder.

(c) Parent shall be entitled to place appropriate legends on the book entries and/or certificates evidencing any shares of Parent Common Stock to be received in the Merger by debtholder(s) and stockholders of the Company who may be considered "affiliates" of Parent for purposes of Rules 144 and 145 under the Securities Act reflecting the restrictions set forth in Rules 144 and 145 and to issue appropriate stop transfer instructions to the transfer agent for Parent Common Stock.

Section 7.16 Treatment of Indebtedness; Equity Value Determinations.

(a) At least ten (10) Business Days prior to the Closing Date, the Company shall deliver to Parent payoff letters in form and substance reasonably satisfactory to Parent with respect to Company Indebtedness, which is set forth on Section 7.16(a), of the Company Disclosure Letter and existing immediately prior to the Effective Time. As of the Effective Time, all such Company Indebtedness shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and shall thereafter only represent the right to receive the Company Indebtedness Merger Shares, which Parent will cause to be issued to the holders of Company Indebtedness on the Closing Date (the "**Company Indebtedness Merger Consideration**") and together with the Capital Stock Merger Consideration, the "**Merger Consideration**").

(b) Not less than ten (10) Business Days prior to the anticipated date for Closing as mutually agreed in good faith by Parent and the Company (the “**Anticipated Closing Date**”):

(i) Parent will deliver to the Company a schedule (the “**Parent Indebtedness, Parent Outstanding Shares and Parent Equity Value Schedule**”, and the date of delivery of the Parent Indebtedness, Parent Outstanding Shares and Parent Equity Value Schedule, the “**Parent Calculations Delivery Date**”) setting forth, in reasonable detail, Parent’s good faith, estimated calculation of Parent Indebtedness, Parent Outstanding Shares and Parent Equity Value (the “**Parent Financial Calculations**”) as of the close of business on the Anticipated Closing Date and as of immediately prior to the Effective Time with respect to the Parent Outstanding Shares (the “**Parent Financials Determination Time**”) prepared and certified by Parent’s chief financial officer (or if there is no chief financial officer at such time, the principal financial and accounting officer for Parent); and

(ii) the Company will deliver to Parent a schedule (the “**Company Equity Value Schedule**”, and together with the Parent Indebtedness, Parent Outstanding Shares and Parent Equity Value Schedule, the “**Financial Schedules**,” and the date of delivery of the Company Equity Value Schedule, the “**Company Equity Value Delivery Date**” and together with the Parent Calculations Delivery Date, the “**Delivery Date**”) setting forth, in reasonable detail, the Company’s good faith, estimated calculation of the Company Equity Value (the “**Company Equity Value Calculations**” and together with the Parent Financial Calculations, the “**Financial Calculations**”) as of the close of business on the Anticipated Closing Date (the “**Company Equity Value Determination Time**”) prepared and certified by Parent’s chief financial officer (or if there is no chief financial officer at such time, the principal financial and accounting officer for Parent). For purposes of this Section 7.16, the “**Delivering Party**” refers to the party delivering its Financial Schedules in accordance with Section 7.16(b)(i) or Section 7.16(b)(ii), as applicable, and the “**Receiving Party**” refers to the party receiving such Financial Schedules.

(c) Each party shall make available to the other party (electronically to the greatest extent possible), as reasonably requested by the other party, the work papers and back-up materials used or useful in preparing the applicable Financial Schedules and, if reasonably requested by the other party, each party’s accountants and counsel at reasonable times and upon reasonable notice.

(d) Within five Business Days after the applicable Delivery Date (the last day of such period, the “**Applicable Response Date**”), the Receiving Party shall have the right to dispute any part of the applicable Financial Calculations by delivering a written notice to that effect to the Delivering Party (a “**Dispute Notice**”). Any Dispute Notice shall identify in reasonable detail and to the extent known the nature and amounts of any proposed revisions to the applicable Financial Calculations.

(e) If, on or prior to the Applicable Response Date, the Receiving Party notifies the Delivering Party in writing that it has no objections to the applicable Financial Calculations or, if prior to 5:00 p.m. (New York City time) on the Applicable Response Date, the Receiving Party has failed to deliver a Dispute Notice as provided in Section 7.16(d), then the applicable Financial Calculations as set forth in the applicable Financial Schedules shall be deemed to have been finally determined for purposes of this Agreement and to represent either the Parent Indebtedness, Parent Outstanding Shares and the Parent Equity Value at the Parent Financials Determination Time, or the Company Equity Value at the Company Equity Value Determination Time, as applicable (the “**Final Parent Indebtedness**,” the “**Final Parent Outstanding Shares**,” the “**Final Parent Equity Value**,” or the “**Final Company Equity Value**,” as applicable) for purposes of this Agreement.

(f) If the Receiving Party delivers a Dispute Notice on or prior to 5:00 p.m. (New York City time) on the Applicable Response Date, then Representatives of Parent and the Company shall promptly, and in no event later than one calendar day after the Applicable Response Date, meet and attempt in good faith to resolve the dispute item(s) and negotiate an agreed-upon determination of the disputed Parent Indebtedness, Parent Outstanding Shares, Parent Equity Value or Company Equity Value, as applicable, which agreed upon Parent Indebtedness, Parent Outstanding Shares, Parent Equity Value or Company Equity Value amount, as applicable, shall be deemed to have been finally determined for purposes of this Agreement and to represent the Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value for purposes of this Agreement.

(g) If Representatives of Parent and the Company are unable to negotiate an agreed-upon determination of the Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value, as applicable, pursuant to Section 7.16(f) within two calendar days after delivery of the Dispute Notice (or such other period as Parent and the Company may mutually agree upon), then any remaining disagreements as to the applicable Financial Calculations shall be referred to an independent auditor of recognized national standing jointly selected by Parent and the Company (the “**Accounting Firm**”). The Delivering Party shall promptly deliver to the Accounting Firm all work papers and back-up materials used in preparing the applicable Financial Schedules subject to the ongoing dispute, and Parent and the Company shall use commercially reasonable efforts to cause the Accounting Firm to make its determination within five calendar days of accepting its selection. Parent and the Company shall be afforded the opportunity to present to the Accounting Firm any material related to the unresolved disputes and to discuss the issues with the Accounting Firm; provided, however, that no such presentation or discussion shall occur without the presence of a Representative of each of Parent and the Company. The determination of the Accounting Firm shall be limited to the disagreements submitted to the Accounting Firm. The determination of the amount of Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value, as applicable, made by the Accounting Firm shall be made in writing delivered to each of Parent and the Company, shall be final and binding on Parent and the Company and shall be deemed to have been finally determined for purposes of this Agreement and to represent the Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value, as applicable, for purposes of this Agreement. The parties shall delay the Closing until the resolution of the matters described in this Section 7.16(b). The fees and expenses of the Accounting Firm shall be allocated between Parent and the Company in the same proportion that the disputed amount of the Parent Indebtedness, Parent Outstanding Shares, Parent Equity Value or Company Equity Value, as applicable, that was unsuccessfully disputed amount by such party (as finally determined by the Accounting Firm) bears to the total disputed amount of the Parent Indebtedness, Parent Outstanding Shares, Parent Equity Value or Company Equity Value, as applicable. If this Section 7.16(g) applies as to the determination of the Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value described in Section 7.16(b), upon resolution of the matter in accordance with this Section 7.16(g), the parties shall not be required to determine the Parent Indebtedness, Parent Outstanding Shares, Parent Equity Value or Company Equity Value again even though the Closing Date may occur later than the Anticipated Closing Date, except that either Parent and the Company may require a redetermination of the Final Parent Indebtedness, Final Parent Outstanding Shares, Final Parent Equity Value or Final Company Equity Value if the Closing Date is more than ten (10) calendar days after the Anticipated Closing Date.

Section 7.17 Private Placement. Parent intends to issue the shares of Parent Common Stock as provided in this Agreement pursuant to a “private placement” exemption or exemptions from registration under Section 4(a)(2) of the Securities Act and an exemption from qualification under applicable state securities laws.

Section 7.18 Registration Rights Agreement. At or prior to the Effective Time, Parent shall authorize and duly adopt, execute and deliver, a Registration Rights Agreement (the “**Registration Rights Agreement**”), in form and substance mutually acceptable to Parent and the persons set forth on Section 7.18 of the Parent Disclosure Letter (the “**Rights Holders**”), pursuant to which, among other things, Parent will register for resale under the Securities Act the Company Merger Shares held by the Rights Holders after the Closing Date.

Section 7.19 Parachute Payment Analysis. Reasonably promptly following the date of this Agreement, Parent shall engage a nationally recognized independent public tax accounting firm (the “**Parachute Payment Accounting Firm**”), reasonably approved by the Company, to conduct an analysis as to whether any Parent Disqualified Individual may be paid or receive any payments, amounts or benefits as a result of or in connection with the Merger (whether alone or upon the occurrence of any additional or subsequent events), that may reasonably be expected to (i) constitute “parachute payments” within the meaning of Section 280G of the Code and (ii) be subject to the excise tax imposed by Section 4999 of the Code (“**Excise Tax**”). Parent shall bear all expenses with respect to the analysis and determinations by such Parachute Payment Accounting Firm required to be made by this Section 7.19. Parent shall furnish such Parachute Payment Accounting Firm such information and documents as the Parachute Payment Accounting Firm may reasonably request in order to make its required determination. The Parachute Payment Accounting Firm shall provide its calculations, together with detailed supporting documentation, to Parent as soon as practicable following its engagement. Parent shall provide to the Company for its reasonable review and approval, at least fifteen (15) Business Days prior to the Closing, copies of such calculations prepared by the Parachute Payment Accounting Firm and such detailed supporting documentation. Any good faith determinations of the Parachute Payment Accounting Firm made hereunder shall be final, binding and conclusive upon Parent, any other member of its Controlled Group and the Parent Disqualified Individuals absent manifest error. No later than five (5) Business Days prior to the Closing, Parent shall obtain and deliver to the Company a Parachute Payment Cutback Agreement from each Parent Disqualified Individual, as determined immediately prior to the Closing, who has not executed and delivered a Parachute Payment Cutback Agreement to Parent prior to the date of this Agreement.

Section 7.20 Equity Financing. Promptly following the date of this Agreement, Parent and the Company shall use commercially reasonable efforts to effectuate an equity financing in Parent on terms and conditions mutually acceptable to Parent and the Company (the “**Equity Financing**”). To effectuate the Equity Financing, within five (5) Business Days following the date of this Agreement, Parent will engage a financial advisor reasonably selected by the Company.

Section 7.21 Debt Financing Agreement. Provided that it is offered on terms materially consistent with the terms set forth on Section 8.2(d)(iv) of the Parent Disclosure Letter, (a) Parent shall take all actions reasonably necessary to enter into the Debt Financing Agreement as of the Closing and (b) the Company shall take all actions reasonably necessary to cause the Debt Providers to enter into the Debt Financing Agreement as of the Closing.

Section 7.22 Parent Refinancing Agreements. Parent shall use commercially reasonable efforts to procure payoff letters and such other documentation from the Parent Lenders as may be necessary to provide for the repayment and/or cancellation of the Final Parent Indebtedness as of the Closing.

ARTICLE VIII CLOSING CONDITIONS

Section 8.1 Conditions Precedent of each Party. The obligations of each party to effect the Merger and otherwise consummate the transactions contemplated hereby to be consummated at the Closing are subject to the satisfaction or, to the extent permitted by applicable Law, the written waiver by each of the parties, at or prior to the Closing, of each of the following conditions:

(a) No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the transactions contemplated hereby shall have been issued by any court of competent jurisdiction or other Governmental Entity of competent jurisdiction and remain in effect and there shall not be any Law which has the effect of making the consummation of the transactions contemplated hereby illegal.

(b) (i) Parent shall have obtained the Parent Stockholder Approval and (ii) the Company shall have obtained the Company Stockholder Approval.

(c) (i) The approval of the listing of the additional shares pursuant to the Nasdaq Listing Application shall have been approved for listing (subject to official notice of issuance) on Nasdaq and (ii) Parent has maintained its existing listing on Nasdaq and obtained approval of the listing of the combined corporation on Nasdaq.

Section 8.2 Conditions Precedent to Obligation of the Company. The obligations of the Company to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by the Company, at or prior to the Closing, of each of the following conditions:

(a) Accuracy of Representations.

(i) The Parent Capitalization Representations shall have been true and correct (other than de minimis inaccuracies) as of the date of this Agreement and as of the Closing Date (after adjusting for the Charter Amendment and the Nasdaq Reverse Stock Split) with the same force and effect as if made on and as of such date, except, in each case, for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct except for any de minimis inaccuracies as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Parent Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded).

(ii) The Parent Fundamental Representations (other than the Parent Capitalization Representations) that (A) are not subject to qualifications based on a “**Parent Material Adverse Effect**” or any other materiality qualifications or other qualifications based on the word “material” or similar phrases (but not dollar thresholds) shall be true and correct in all material respects and (B) are subject to qualifications based on a “**Parent Material Adverse Effect**” or any other materiality qualifications or other qualifications based on the word “material” or similar phrases (but not dollar thresholds) shall be true and correct in all respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as if made on and as of such date except, in each case, for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct in all material respects or in all respects, as applicable, as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Parent Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded).

(iii) The representations and warranties of Parent, Intermediate Parent, Intermediate and Merger Sub made in this Agreement (other than the Parent Fundamental Representations) shall be true and correct as of the date of this Agreement and as of the Closing Date with the same force and effect as if made on and as of such date, except (A) for any failure to be so true and correct which would not reasonably be expected to have a Parent Material Adverse Effect, and (B) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct as of such particular date, except for any failure to be so true and correct as of such date which would not reasonably be expected to have a Parent Material Adverse Effect) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Parent Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded); provided, however, that for purposes of determining the accuracy of the representations and warranties of Parent, Intermediate Parent, Intermediate and Merger Sub set forth in this Agreement for purposes of this Section 8.2(a)(iii), all qualifications in the representations and warranties based on a “**Parent Material Adverse Effect**” and all materiality qualifications and other qualifications based on the word “material” or similar phrases (but not dollar thresholds) contained in such representations and warranties shall be disregarded.

(b) Performance of Covenants. Parent shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Effective Time.

(c) No Parent Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Parent Material Adverse Effect.

(d) Documents. The Company shall have received the following documents, each of which shall be in full force and effect:

(i) a certificate executed by an officer of Parent certifying that the conditions set forth in Section 8.2(a), (b) and (c) have been duly satisfied;

(ii) written resignations in forms reasonably satisfactory to the Company, dated as of the Closing Date and effective as of the Closing executed by the officers and directors of Parent and its Subsidiaries who are not to continue as officers or directors of Parent and its Subsidiaries pursuant to Section 7.10;

(iii) the Registration Rights Agreement pursuant to Section 7.18; and

(iv) an agreement (the “**Debt Financing Agreement**”) pursuant to which Motive GM Holdings II LLC or its Affiliate (in such capacity, collectively with its respective former, current or future directors, officers, affiliates, employees, partners and advisors, the “**Debt Providers**”) will provide, subject to the terms and conditions thereof, debt financing to Parent (the “**Debt Financing**”), in accordance with the terms set forth on Section 8.2(d)(iv) of the Parent Disclosure Letter.

(e) Repayment and/or Cancellation of Parent Indebtedness. The Company shall have received from Parent evidence in form and substance reasonably satisfactory to the Company of the repayment and cancellation of the Final Parent Indebtedness and the release of the Liens securing such Final Parent Indebtedness.

(f) Performance of Sale and Leaseback Transaction. Parent shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it pursuant to the terms and conditions of the Sale and Leaseback Transaction prior to the Effective Time.

(g) Board of Directors. The Board of Directors of Parent will be as specified in Section 2.6(c) of the Parent Disclosure Letter as of immediately following the Closing.

(h) Parent Refinancing Agreements. Parent and the Parent Lenders shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by them pursuant to the terms and conditions of the Parent Refinancing Agreements prior to the Effective Time. Parent shall have obtained all authorizations and approvals required to be obtained by it pursuant to the Parent Refinancing Agreements.

Section 8.3 Conditions Precedent of Parent, Intermediate Parent, Intermediate and Merger Sub. The obligations of Parent, Intermediate Parent, Intermediate and Merger Sub to effect the Merger and otherwise consummate the transactions to be consummated at the Closing are subject to the satisfaction or the written waiver by Parent, at or prior to the Closing, of each of the following conditions:

(a) Accuracy of Representations.

(i) The Company Capitalization Representations shall have been true and correct (other than de minimis inaccuracies) as of the date of this Agreement and as of the Closing Date with the same force and effect as if made on and as of such date, except, in each case, for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct except for any de minimis inaccuracies as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded).

(ii) The Company Fundamental Representations (other than the Company Capitalization Representations) that (A) are not subject to qualifications based on a “**Material Adverse Effect**” or any other materiality qualifications or other qualifications based on the word “material” or similar phrases (but not dollar thresholds) shall be true and correct in all material respects and (B) are subject to qualifications based on a “**Material Adverse Effect**” or any other materiality qualifications or other qualifications based on the word “material” or similar phrases (but not dollar thresholds) shall be true and correct in all respects, in each case as of the date of this Agreement and as of the Closing Date with the same force and effect as if made on and as of such date except, in each case, for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct in all material respects or in all respects, as applicable, as of such particular date) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded).

(iii) The representations and warranties of the Company made in this Agreement (other than the Company Fundamental Representations) shall be true and correct as of the date of this Agreement and as of the Closing Date with the same force and effect as if made on and as of such date, except (A) for any failure to be so true and correct which would not reasonably be expected to have a Material Adverse Effect, and (B) for those representations and warranties which address matters only as of a particular date (which representations shall have been true and correct as of such particular date, except for any failure to be so true and correct as of such date which would not reasonably be expected to have a Material Adverse Effect) (it being understood that, for purposes of determining the accuracy of such representations and warranties, any update of or modification to the Company Disclosure Letter made or purported to have been made after the date of this Agreement shall be disregarded); provided, however, that for purposes of determining the accuracy of the representations and warranties of the Company set forth in this Agreement for purposes of this Section 8.3(a)(iii), all qualifications in the representations and warranties based on a “**Material Adverse Effect**” and all materiality qualifications and other qualifications based on the word “material” or similar phrases (but not dollar thresholds) contained in such representations and warranties shall be disregarded.

(b) Performance of Covenants. The Company shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it under this Agreement at or prior to the Effective Time.

(c) No Material Adverse Effect. Since the date of this Agreement, there shall not have occurred any Material Adverse Effect.

(d) Closing Certificate. Parent shall have received a certificate executed by an officer of the Company certifying (a) that the conditions set forth in Section 8.3(a), (b), and (c) have been duly satisfied and (b) that the information set forth in the Allocation Certificate delivered by the Company in accordance with Section 7.13 is true and accurate in all respects as of the Closing Date.

(e) Documents. The Debt Providers shall have executed the Debt Financing Agreement, which Parent may not refuse to enter into if it is materially consistent with the terms set forth on Section 8.2(d)(iv) of the Parent Disclosure Letter.

(f) Performance of Sale and Leaseback Transaction. Mango Workhorse LLC shall have performed or complied with in all material respects all agreements and covenants required to be performed or complied with by it pursuant to the terms and conditions of the Sale and Leaseback Transaction prior to the Effective Time.

ARTICLE IX TERMINATION

Section 9.1 Termination. This Agreement may be terminated prior to the Effective Time (whether before or after the adoption of this Agreement by the Company's stockholders and whether before or after approval of the Parent Stockholder Proposals by Parent's stockholders, unless otherwise specified below):

(a) by mutual consent of Parent and the Company;

(b) by either Parent or the Company if the Merger shall not have been consummated by February 14, 2026 (subject to possible extension as provided in this Section 9.1(b), the "**End Date**"); provided, however, that the right to terminate this Agreement under this Section 9.1(b) shall not be available to the Company or Parent if such party's (or in the case of Parent, Intermediate Parent's, Intermediate's or Merger Sub's) action or failure to act has been a principal cause of the failure of the Merger to occur on or before the End Date and such action or failure to act constitutes a breach of this Agreement, provided, further, however, that, in the event that the SEC has not concluded its review of the preliminary Proxy Statement (whether by confirmation that the SEC has no further comments or expiration of the 10-day waiting period contemplated by Rule 14a-6(a) promulgated under the Exchange Act) by the date which is 60 days prior to the End Date, then either the Company or Parent shall be entitled to extend the End Date for an additional 60 days;

(c) by either Parent or the Company if a court of competent jurisdiction or other Governmental Entity shall have issued a final and nonappealable order, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby;

(d) by Parent if the Company Stockholder Approval shall not have been obtained by written consent of the Company's stockholders in lieu of a meeting within two (2) Business Days of this Agreement; provided, however, that once the Company Stockholder Approval has been obtained, Parent may not terminate this Agreement pursuant to this Section 9.1(d);

(e) by either Parent or the Company if (i) the Parent Stockholder Meeting (including any adjournments and postponements thereof) shall have been held and completed and Parent's stockholders shall have taken a final vote on the Parent Stockholder Proposals and (ii) the Parent Stockholder Approval shall not have been obtained at the Parent Stockholder Meeting (or any adjournment or postponement thereof); provided, however, that the right to terminate this Agreement under this [Section 9.1\(e\)](#) shall not be available to Parent where the failure to obtain the Parent Stockholder Approval shall have been caused by the action or failure to act of Parent and such action or failure to act constitutes a material breach by Parent of this Agreement;

(f) by the Company (at any time prior to obtaining the Parent Stockholder Approval) if any Parent Triggering Event shall have occurred;

(g) by Parent (at any time prior to obtaining the Company Stockholder Approval) if any Company Triggering Event shall have occurred;

(h) by the Company, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by Parent, Intermediate Parent, Intermediate or Merger Sub or if any representation or warranty of Parent, Intermediate Parent, Intermediate or Merger Sub shall have become inaccurate, in either case, such that the conditions set forth in [Section 8.2\(a\)](#) or [Section 8.2\(b\)](#) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; provided that the Company is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; provided, further that if such inaccuracy in Parent's, Intermediate Parent's, Intermediate's or Merger Sub's representations and warranties or breach by Parent, Intermediate Parent, Intermediate or Merger Sub is curable by Parent, Intermediate Parent, Intermediate or Merger Sub, then this Agreement shall not terminate pursuant to this [Section 9.1\(h\)](#) as a result of such particular breach or inaccuracy until the earlier of (i) the expiration of a 30-day period commencing upon delivery of written notice from the Company to Parent, Intermediate Parent, Intermediate or Merger Sub of such breach or inaccuracy and its intention to terminate pursuant to this [Section 9.1\(h\)](#) and (ii) Parent, Intermediate Parent, Intermediate or Merger Sub (as applicable) ceasing to exercise commercially reasonable efforts to cure such breach following delivery of written notice from the Company to Parent, Intermediate Parent, Intermediate or Merger Sub of such breach or inaccuracy and its intention to terminate pursuant to this [Section 9.1\(h\)](#) (it being understood that this Agreement shall not terminate pursuant to this [Section 9.1\(h\)](#) as a result of such particular breach or inaccuracy if such breach by Parent, Intermediate Parent, Intermediate or Merger Sub is cured prior to such termination becoming effective); or

(i) by Parent, upon a breach of any representation, warranty, covenant or agreement set forth in this Agreement by the Company or if any representation or warranty of the Company shall have become inaccurate, in either case, such that the conditions set forth in [Section 8.3\(a\)](#) or [Section 8.3\(b\)](#) would not be satisfied as of the time of such breach or as of the time such representation or warranty shall have become inaccurate; provided that Parent is not then in material breach of any representation, warranty, covenant or agreement under this Agreement; provided, further that if such inaccuracy in the Company's representations and warranties or breach by the Company is curable by the Company, then this Agreement shall not terminate pursuant to this [Section 9.1\(i\)](#) as a result of such particular breach or inaccuracy until the earlier of (i) the expiration of a 30-day period commencing upon delivery of written notice from Parent to the Company of such breach or inaccuracy and its intention to terminate pursuant to this [Section 9.1\(i\)](#) and (ii) the Company ceasing to exercise commercially reasonable efforts to cure such breach following delivery of written notice from Parent to the Company of such breach or inaccuracy and its intention to terminate pursuant to this [Section 9.1\(i\)](#) (it being understood that this Agreement shall not terminate pursuant to this [Section 9.1\(i\)](#) as a result of such particular breach or inaccuracy if such breach by the Company is cured prior to such termination becoming effective).

The party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give a notice of such termination to the other party specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail.

Section 9.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 9.1, this Agreement shall be of no further force or effect; provided, however, that (a) this Section 9.2, Section 9.3 and Article X (and the related definitions of the defined terms in such section) shall survive the termination of this Agreement and shall remain in full force and effect and (b) the termination of this Agreement and the provisions of Section 9.3 shall not relieve any party of any liability for fraud or for any willful and material breach of any representation, warranty, covenant, obligation or other provision contained in this Agreement.

Section 9.3 Expenses; Termination Fees.

(a) Except as set forth in this Section 9.3 all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Merger is consummated, provided however, that the Company and Parent shall bear and pay the fees associated with the Nasdaq Listing Application equally and Parent shall pay, among other things, all other costs, fees, and expenses incurred in relation to the printing and filing with the SEC of the Proxy Statement (including any financial statements and exhibits) and any amendments or supplements thereto and paid to a financial printer or the SEC.

(b) If (i) this Agreement is terminated by Parent or the Company pursuant to Section 9.1(e) or by the Company pursuant to Section 9.1(h), (ii) at any time after the date of this Agreement and prior to the Parent Stockholder Meeting an Acquisition Proposal with respect to Parent shall have been publicly announced, disclosed or otherwise communicated to the Parent Board (and shall not have been withdrawn) and (iii) within twelve (12) months after the date of such termination, Parent enters into a definitive agreement with respect to a Subsequent Transaction that is subsequently consummated or consummates a Subsequent Transaction, then Parent shall pay the Company, upon such consummation of a Subsequent Transaction, a nonrefundable fee in an amount equal to \$1,050,000 (the “**Parent Termination Fee**”).

(c) If this Agreement is terminated by the Company pursuant to Section 9.1(f) (or, at the time this Agreement is terminated, the Company had the right to terminate this Agreement pursuant to Section 9.1(f)), then Parent shall pay to the Company, within five (5) Business Days of such termination the Parent Termination Fee.

(d) If (i) this Agreement is terminated by Parent pursuant to Section 9.1(d) or Section 9.1(i), (ii) at any time after the date of this Agreement and before obtaining the Company Stockholder Approval, an Acquisition Proposal with respect to the Company shall have been publicly announced, disclosed or otherwise communicated to the Company Board (and shall not have been withdrawn) and (iii) within twelve (12) months after the date of such termination, the Company enters into a definitive agreement with respect to a Subsequent Transaction that is subsequently consummated or consummates a Subsequent Transaction, then the Company shall pay to Parent, upon such consummation of a Subsequent Transaction, an amount equal to \$1,750,000 (the “*Company Termination Fee*”).

(e) If this Agreement is terminated by Parent pursuant to Section 9.1(g) (or, at the time this Agreement is terminated, Parent had the right to terminate this Agreement pursuant to Section 9.1(g)), then Company shall pay to Parent, within five (5) Business Days of such termination the Company Termination Fee.

(f) If either party fails to pay when due any amount payable by it under this Section 9.3, then (i) such party shall reimburse the other party for reasonable and documented out-of-pocket costs and expenses (including reasonable fees and disbursements of counsel) incurred in connection with the collection of such overdue amount and the enforcement by the other party of its rights under this Section 9.3 and (ii) such party shall pay to the other party interest on such overdue amount (for the period commencing as of the date such overdue amount was originally required to be paid and ending on the date such overdue amount is actually paid to the other party in full) at a rate per annum equal to the “prime rate” (as set forth in the Wall Street Journal) in effect on the date such overdue amount was originally required to be paid plus three percent.

(g) The parties agree that, subject to Section 9.2, the payment of fees and expenses set forth in this Section 9.3 shall be the sole and exclusive remedy of each party following a termination of this Agreement under the circumstances described in this Section 9.3, it being understood that in no event shall either Parent or the Company be required to pay the individual fees or damages payable pursuant to this Section 9.3 on more than one occasion. Subject to Section 9.2, following the payment of the fees and expenses set forth in this Section 9.3 by a party, (i) such party shall have no further liability to the other party in connection with or arising out of this Agreement or the termination thereof, any breach of this Agreement by the other party giving rise to such termination, or the failure of the transactions contemplated hereby to be consummated, (ii) no other party or their respective Affiliates shall be entitled to bring or maintain any other claim, action or proceeding against such party or seek to obtain any recovery, judgment or damages of any kind against such party (or any partner, member, stockholder, director, officer, employee, Subsidiary, Affiliate, agent or other Representative of such party) in connection with or arising out of this Agreement or the termination thereof, any breach by such party giving rise to such termination or the failure of the transactions contemplated hereby to be consummated and (iii) all other parties and their respective Affiliates shall be precluded from any other remedy against such party and its Affiliates, at law or in equity or otherwise, in connection with or arising out of this Agreement or the termination thereof, any breach by such party giving rise to such termination or the failure of the transactions contemplated hereby to be consummated. Each of the parties acknowledges that (x) the agreements contained in this Section 9.3 are an integral part of the transactions contemplated hereby, (y) without these agreements, the parties would not enter into this Agreement and (z) any amount payable pursuant to this Section 9.3 is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate the parties in the circumstances in which such amount is payable; provided, however, that nothing in this Section 9.3(g) shall limit the rights of the parties under Section 10.3.

ARTICLE X
GENERAL PROVISIONS

Section 10.1 Non-survival of Representations and Warranties. None of the representations, warranties, covenants or agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, other than those covenants or agreements of the parties which by their terms apply, or are to be performed in whole or in part, after the Effective Time.

Section 10.2 Amendment or Supplement. This Agreement may be amended, modified or supplemented by the parties by action taken or authorized by their respective Boards of Directors at any time, whether before or after Company Stockholder Approval or the Parent Stockholder Approval has been obtained; provided, however, that after the Company Stockholder Approval or the Parent Stockholder Approval, as applicable, has been obtained, no amendment shall be made that pursuant to applicable Law requires further approval or adoption by the stockholders of the Company or Parent, as applicable, without such further approval or adoption. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each of the parties in interest at the time of the amendment.

Section 10.3 Waiver. The parties may, by action taken or authorized by their respective Boards of Directors, to the extent permitted by applicable Law, waive compliance with any of the agreements or conditions of the other parties contained herein; provided, however, that after the Company Stockholder Approval or the Parent Stockholder Approval, as applicable, has been obtained, no waiver may be made that pursuant to applicable Law requires further approval or adoption by the stockholders of the Company or Parent, as applicable, without such further approval or adoption. Any agreement on the part of a party to any such waiver shall be valid only if set forth in a written instrument executed and delivered by a duly authorized officer on behalf of such party. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the parties hereunder are cumulative and are not exclusive of any rights or remedies which they would otherwise have hereunder.

Section 10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, or if by e-mail, on the date sent by e-mail if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, (b) on the first (1st) Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

- (i) if to Parent, Intermediate Parent, Intermediate Merger Sub or the Surviving Company (following the Closing), to:

Workhorse Group Inc.
3600 Park 42 Drive, Suite 160E
Sharonville, Ohio 45241
Attention: Richard Dauch, Chief Executive Officer
E-mail: rick.dauch@workhorse.com
with a copy (which shall not constitute notice) to:

Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Attention: Arthur McMahon, III
Email: amcmahon@taftlaw.com

- (ii) if to Company, to:

Motiv Power Systems, Inc.
330 Hatch Drive
Foster City, California 94404
Attention: Scott Griffith, Chief Executive Officer
Email: scott.griffith@motivps.com

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

DLA Piper LLP (US)
303 Colorado Street, Suite 3000
Austin, Texas 78701
Attention: Brent Bernell
Jeffrey Scharfstein, P.C.
E-mail: brent.bernell@us.dlapiper.com
jeffrey.scharfstein@us.dlapiper.com

Section 10.5 Entire Agreement. This Agreement (including the Exhibits hereto), the Company Disclosure Letter, the Parent Disclosure Letter, the Company Support Agreement, the Registration Rights Agreement, the Confidentiality Agreement, and the transaction documents effecting the Sale and Leaseback Transaction and the Convertible Financing, constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings among the parties with respect to the subject matter hereof and thereof.

Section 10.6 No Third Party Beneficiaries.

(a) Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement, except as provided in Section 7.5.

(b) The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 10.3 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 10.7 Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of Delaware, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of Delaware.

Section 10.8 Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by any party or its Affiliates against any other party or its Affiliates shall be brought and determined in the Court of Chancery of the State of Delaware; provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then any such legal action or proceeding may be brought in any federal court located in the State of Delaware or any other Delaware state court. Each of the parties hereby irrevocably submits to the jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in Delaware, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in Delaware as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in Delaware as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 10.9 Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the other parties, and any such assignment without such prior written consent shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

Section 10.10 Specific Performance. The parties agree that irreparable damage would occur in the event that the parties hereto do not perform the provisions of this Agreement in accordance with its terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that each party shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the Court of Chancery of the State of Delaware, provided, that if jurisdiction is not then available in the Court of Chancery of the State of Delaware, then in any federal court located in the State of Delaware or any other Delaware state court, this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

Section 10.11 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision or portion of any provision had never been contained herein.

Section 10.12 Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 10.13 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

Section 10.14 Facsimile or .pdf Signature. This Agreement may be executed by facsimile or .pdf signature and a facsimile or .pdf signature shall constitute an original for all purposes.

Section 10.15 No Presumption Against Drafting Party. Each of Parent, Intermediate Parent, Intermediate, Merger Sub and the Company acknowledges that each party to this Agreement has been represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the drafting party has no application and is expressly waived.

Section 10.16 Lender Limitations. Notwithstanding anything to the contrary contained in this Agreement, each of Parent, Intermediate Parent, Intermediate and Merger Sub agrees that it will not bring or support any person in any action, suit, proceeding, cause of action, claim, cross-claim or third-party claim of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any of the Debt Providers (which defined term for the purposes of this provision shall include the Debt Providers and their respective Affiliates, equityholders, members, partners, officers, directors, employees, agents, advisors and representatives involved in the Debt Financing but exclude, for the avoidance of doubt, the Company or any of its Affiliates) in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including, but not limited to, any dispute arising out of or relating in any way to the Debt Financing Agreement or the performance thereof or the Debt Financing contemplated thereby. Notwithstanding anything to the contrary contained in this Agreement, (a) none of Parent, Intermediate Parent, Intermediate or Merger Sub, and none of their respective Affiliates, directors, officers, employees, agents, partners, managers, members or stockholders, shall have any rights or claims against any Debt Provider, in any way relating to this Agreement or any of the transactions contemplated by this Agreement, or in respect of any, or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Financing Agreement or the performance thereof or the Debt Financing contemplated thereby, whether at law or equity, in contract, in tort or otherwise and (b) no Debt Provider shall have any liability (whether in contract, in tort or otherwise) to any of Parent, Intermediate Parent, Intermediate and Merger Sub, their respective Subsidiaries or any of their respective Affiliates, directors, officers, employees, agents, partners, managers, members or stockholders (other than the Company or any of its Affiliates) for any obligations or liabilities of any party hereto under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby or in respect of any oral representations made or alleged to have been made in connection herewith or therewith, including any dispute arising out of or relating in any way to the Debt Financing Agreement or the performance thereof or the Debt Financing contemplated thereby, whether at law or equity, in contract, in tort or otherwise. Notwithstanding anything to the contrary contained in this Agreement, nothing in this Section 10.16 shall in any way affect any party's or any of its Affiliates' rights and remedies under any binding agreement to which a Debt Provider is a party. This Section 10.16 shall not be terminated or modified without the prior written consent of the Debt Providers, it being expressly agreed that the Debt Providers are third-party beneficiaries of this Section 10.16.

[The remainder of this page is intentionally left blank.]

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

WORKHORSE GROUP INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA INTERMEDIATE 2, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA INTERMEDIATE, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA MERGER SUBSIDIARY, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

MOTIV POWER SYSTEMS, INC.

By: /s/ Scott Griffith
Name: Scott Griffith
Title: Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

Exhibit A

FIRPTA CERTIFICATE

Omitted.

Exhibit B

COMPANY SUPPORT AGREEMENT

Omitted.

Exhibit C

FORM OF PARACHUTE PAYMENT CUTBACK AGREEMENT

Omitted.

EXECUTION COPY

THIS NOTE AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THE NOTE AND ANY SUCH SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS NOTE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

THIS NOTE IS SUBJECT TO AN INTERCREDITOR AGREEMENT, DATED AS OF AUGUST 15, 2025, BY AND AMONG THE COMPANY (AS DEFINED BELOW), THE GUARANTORS (AS DEFINED BELOW), THE HOLDER AND HORSEPOWER MANAGEMENT LLC, IN ITS CAPACITY AS FIRST LIEN AGENT, AS MAY BE AMENDED, RESTATED, AMENDED AND RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME (THE "INTERCREDITOR AGREEMENT").

WORKHORSE GROUP INC.

SUBORDINATED SECURED CONVERTIBLE NOTE

Issuance Date: August 15, 2025

Original Principal Amount: U.S.
\$5,000,000.00

FOR VALUE RECEIVED, Workhorse Group Inc., a Nevada corporation (the "**Company**"), hereby promises to pay to Motive GM Holdings II LLC or its permitted registered assigns ("**Holder**") the amount set forth above as the Original Principal Amount (the "**Principal**") when due, whether upon the Maturity Date, or upon acceleration or otherwise (in each case in accordance with the terms hereof) and to pay interest ("**Interest**") on any outstanding Principal at the applicable Interest Rate (as defined below) from the date set forth above as the Issuance Date (the "**Issuance Date**") until the same becomes due and payable, whether upon the Maturity Date or upon acceleration, conversion or otherwise (in each case in accordance with the terms hereof). Certain capitalized terms used herein are defined in Section 22.

1. **PAYMENTS OF PRINCIPAL**. Subject to Section 3, on the Maturity Date, the Company shall pay to the Holder an amount in cash representing all outstanding Principal and accrued and unpaid Interest (and for purposes of clarity, the Company shall not be required to make any payments of Interest in cash prior to the Maturity Date, including on any Interest Date (as defined below)). Other than as specifically permitted by this Subordinated Secured Convertible Note (this "**Note**"), the Company may not prepay any portion of the outstanding Principal or accrued and unpaid Interest.

2. **INTEREST; INTEREST RATE**.

(a) Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 360-day year and twelve 30-day months. On the first Business Day of each Fiscal Quarter (each, an "**Interest Date**"), any accrued and unpaid Interest shall be compounded and become additional Principal outstanding hereunder as of such Interest Date (each, a "**Quarterly Compounding**").

(b) Prior to a Quarterly Compounding, interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Purchase Amount on any Conversion Date in accordance with Section 3 or any required payment upon any Bankruptcy Event of Default. From and after the occurrence and during the continuance of any Event of Default, the Interest Rate shall automatically be increased to the applicable Default Rate. In the event that such Event of Default is subsequently cured or waived in writing in accordance with the terms of this Note and the other Transaction Documents (and no other Event of Default then exists, including, without limitation, for the Company's failure to pay such Interest at the Default Rate on the applicable Interest Date), the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure or waiver; unless expressly provided therein, any such cure or waiver shall not relieve the Company of its obligation to pay Interest at the Default Rate for the period from the occurrence of such Event of Default through and including the date of such cure or waiver of such Event of Default.

3. **CONVERSION OF NOTE.** If there is an Equity Financing in connection with, or after, the Closing (as defined in the Merger Agreement) but on or before the Maturity Date of this Note, on the initial closing date of such Equity Financing (the "**Conversion Date**"), this Note will automatically convert into the number of shares of Holder Stock equal to the Purchase Amount divided by the Conversion Price. In connection with the automatic conversion of this Note into shares of Holder Stock, the Holder will execute and deliver to the Company all of the transaction documents (the "**Equity Documents**") related to the Equity Financing; *provided*, that such documents are the same documents to be entered into with the purchasers of Standard Stock, with appropriate variations for the Holder Stock if applicable.

4. **RIGHTS UPON EVENT OF DEFAULT.**

(a) **Event of Default.** Each of the following events shall constitute an "**Event of Default**" and each of the events in clauses (iii), (iv) and (v) below shall constitute a "**Bankruptcy Event of Default**":

(i) the Company's failure to deliver the required number of shares of Holder Stock on the Conversion Date, if any;

(ii) the Company's or any Subsidiary's failure to pay to the Holder any amount of Principal, Interest or other amounts when and as due under this Note (which for purposes of clarity, will be payable only on the Maturity Date or pursuant to Section 4(b) hereof) or any other Transaction Document or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby;

(iii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(iv) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(v) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs;

(vi) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation or warranty in any material respect (other than representations or warranties that are qualified by materiality, which may not be breached in any respect), or any covenant or other term or condition of any Transaction Document, except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of two (2) consecutive Business Days;

(vii) a materially false or inaccurate certification (including a materially false or inaccurate deemed certification) by the Company as to whether any Event of Default has occurred;

(viii) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 7 of this Note;

(ix) any provision of any Transaction Document (including, without limitation, the Security Documents and the Guaranties) shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document (including, without limitation, the Security Documents and the Guaranties);

(x) any Security Document shall for any reason fail or cease to create a separate valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien (subject to the Intercreditor Agreement) on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent or any material provision of any Security Document shall at any time for any reason cease to be valid and binding on or enforceable against the Company or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any governmental authority having jurisdiction over the Company, seeking to establish the invalidity or unenforceability thereof;

(xi) any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days, the cessation or substantial curtailment of revenue producing activities at any facility of the Company or any Subsidiary, if any such event or circumstance could have a Material Adverse Effect; or

(xii) any Event of Default (as defined in the Senior Notes) occurs with respect to any Senior Notes.

(b) Notice of an Event of Default; Remedies. Upon the occurrence of an Event of Default with respect to this Note, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) to the Holder and the Collateral Agent. Upon the occurrence of any Event of Default, the Holder may by notice to the Company declare the unpaid principal balance of this Note together with all accrued and unpaid Interest thereon and all fees, Collection Costs and other sums evidenced by this Note to be immediately due and payable, whereupon the unpaid principal balance of this Note together with all accrued and unpaid interest thereon and all fees, Collection Costs and other sums evidenced by this Note shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Company; provided, however, that upon the occurrence of any Bankruptcy Event of Default, the unpaid principal balance of this Note together with all accrued and unpaid interest thereon, and all fees, Collection Costs and other sums evidenced by this Note, shall automatically become and be immediately due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Company. The Holder's and Collateral Agent's rights and remedies with respect to the acceleration of this Note upon the occurrence of an Event of Default are in addition to the Holder's and Collateral Agent's rights and remedies under common and statutory law and under any other Transaction Documents.

5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants to the Holder that, as of the Issuance Date:

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing (if a good standing concept exists in such jurisdiction) in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect. Other than as set forth on Section 5.3 of the Parent Disclosure Letter to the Merger Agreement, the Company has no Subsidiaries.

(b) Authorization; Enforcement; Validity. The Company has the requisite power and authority to enter into and perform its obligations under this Note and the other Transaction Documents. Each Subsidiary has the requisite power and authority to enter into and perform its obligations under the Transaction Documents to which it is a party. The execution and delivery of this Note and the other Transaction Documents by the Company and its Subsidiaries, to which each is a party, and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby have been duly authorized by the Company's board of directors and each of its Subsidiaries' board of directors or other governing body, as applicable, and no further filing, consent or authorization is required by the Company, its Subsidiaries, their respective boards of directors or their shareholders or other governing body. This Note and the other Transaction Documents to which it is a party have been duly executed and delivered by the Company, and each constitutes the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with its respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law. The Transaction Documents to which each Subsidiary is a party has been duly executed and delivered by each such Subsidiary, and shall constitute the legal, valid and binding obligations of each such Subsidiary, enforceable against each such Subsidiary in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities law.

(c) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and its Subsidiaries and the consummation by the Company and its Subsidiaries of the transactions contemplated hereby and thereby (including, without limitation, the issuance of this Note) will not (i) result in a violation of the Articles of Incorporation (including, without limitation, any certificate of designation contained therein), Bylaws, certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, in each case as amended to the date hereof, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Principal Market and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, except in the case of clauses (ii) and (iii) above, for such breaches, violations or conflicts as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(d) Consents. Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with, any Governmental Entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Transaction Documents, in each case, in accordance with the terms hereof or thereof, other than the filing of a Current Report on Form 8-K with the Securities and Exchange Commission and the filing of a Listing Additional Shares Notification with the Principal Market, and with respect to issuance of the Holder Stock, the consents, approvals, filings, and notices contemplated by the Merger Agreement.

(e) Acknowledgment Regarding Holder's Purchase of Securities. The Company acknowledges and agrees that the Holder is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated hereby and thereby and that the Holder is not (i) an officer or director of the Company or any of its Subsidiaries, (ii) an "affiliate" (as defined in Rule 144 promulgated under the 1933 Act (or a successor rule thereto) (collectively, "**Rule 144**")) of the Company or any of its Subsidiaries or (iii) to its knowledge, a "beneficial owner" of more than 10% of the shares of common stock (as defined for purposes of Rule 13d-3 of the 1934 Act). The Company further acknowledges that the Holder is not acting as a financial advisor or fiduciary of the Company or any of its Subsidiaries (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated hereby and thereby, and any advice given by the Holder or any of its representatives or agents in connection with the Transaction Documents and the transactions contemplated hereby and thereby is merely incidental to the Holder's purchase of the Securities. The Company further represents to the Holder that the Company's and each Subsidiary's decision to enter into the Transaction Documents to which it is a party has been based solely on the independent evaluation by the Company, each Subsidiary and their respective representatives.

(f) Investment Company Status. The Company is not, and upon consummation of the sale of the Securities will not be, an “investment company,” an affiliate of an “investment company,” a company controlled by an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company” as such terms are defined in the Investment Company Act of 1940, as amended.

(g) Transfer Taxes. On the Issuance Date, all stock transfer or other taxes (other than income or similar taxes) which are required to be paid in connection with the issuance, sale and transfer of this Note will be, or will have been, fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

(h) OFAC. The Company is not, and to the knowledge of the Company, no director, officer, employee, agent or other Person acting on behalf of the Company is, an individual or entity that is, or that is owned or controlled by Persons that are: (i) the subject or target of any sanctions administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority (collectively, “**Sanctions**”); or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions including, without limitation, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea Region of the Ukraine.

(i) USA PATRIOT Act. The Company is not a Person (i) described or designated in the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control or in Section 1 of Executive Order 13224 signed on September 23, 2001, as amended, or (ii) that engages in any dealings or transactions with any such Person.

(j) Ranking of Notes. Other than the Senior Notes, no Indebtedness of the Company will be senior to, or pari passu with, the Notes in right of payment, whether with respect to payment, interest, damages, upon liquidation or dissolution or otherwise.

6. CONDITIONS PRECEDENT. The obligation of the Holder to purchase this Note on the Issuance Date is subject to the satisfaction, at or before the Issuance Date, of each of the following conditions:

(a) The Company and each Subsidiary (as the case may be) shall have duly executed and delivered to the Holder each of the Transaction Documents to which it is a party.

(b) The Company shall have delivered to the Holder a certificate evidencing the formation and good standing (if a good standing concept exists in such jurisdiction) of the Company and each of its Subsidiaries in each such entity's jurisdiction of formation issued by the Secretary of State (or comparable office) of such jurisdiction of formation as of a date within ten (10) days of the Issuance Date.

(c) The Company shall have delivered to the Holder a certified copy of the Articles of Incorporation as certified by the Nevada Secretary of State within ten (10) days of the Issuance Date.

(d) Each Subsidiary shall have delivered to the Holder a certified copy of its Articles of Incorporation (or such equivalent organizational document) as certified by the Secretary of State (or comparable office) of such Subsidiary's jurisdiction of incorporation within ten (10) days of the Issuance Date.

(e) The Company and each Subsidiary shall have delivered to the Holder a certificate, in the form acceptable to the Holder, executed by the Secretary of the Company and each Subsidiary and dated as of the Issuance Date, as to (i) the resolutions as adopted by the Company's and each Subsidiary's board of directors in a form reasonably acceptable to the Holder, (ii) the Articles of Incorporation of the Company (the "**Articles of Incorporation**") and the organizational documents of each Subsidiary and (iii) the Bylaws of the Company (the "**Bylaws**") and the bylaws of each Subsidiary, each as in effect at the Issuance Date.

(f) The Company shall have obtained all governmental, regulatory or third party consents and approvals, if any, necessary for the issuance of this Note, including without limitation, those required by the Principal Market, if any.

(g) No statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or endorsed by any court or Governmental Entity of competent jurisdiction that prohibits the consummation of any of the transactions contemplated by the Transaction Documents.

(h) In accordance with the terms of the Security Documents, the Company shall have delivered to the Collateral Agent appropriate financing statements on Form UCC-1 to be duly filed in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Document.

(i) The Collateral Agent shall have received the Security Agreement, duly executed by the Company and each of its Subsidiaries.

(j) The Holder shall have received a letter on the letterhead of the Company, duly executed by the Chief Executive Officer of the Company, setting forth the wire amounts of the Holder and the wire transfer instructions of the Company.

(k) The Company and its Subsidiaries shall have delivered to the Holder such other documents, instruments or certificates relating to the transactions contemplated by this Note as the Holder or its counsel may reasonably request.

7. COVENANTS. Until this Note has been converted, paid in full or otherwise satisfied in accordance with its terms:

(a) Rank. All payments due under this Note (a) shall be subordinated to all Senior Notes and (b) shall be senior to all other Indebtedness of the Company and its Subsidiaries.

(b) Merger Agreement. The Company shall comply with covenants in Section 6.1 of the Merger Agreement.

(c) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(d) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(e) Stay, Extension and Usury Laws. To the extent that it may lawfully do so, the Company (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Note; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(f) Board Composition.

(i) The Company agrees that the Holder shall be entitled to nominate one director, who shall initially be Alan Henricks (the “**Nominee**”) to the Company’s Board of Directors (the “**Board**”). The Company agrees (i) to expand the size of the Board from seven (7) directors to eight (8) directors and appoint the Nominee to the Board effective as of the date hereof; (ii) to include the Nominee as a nominee to the Board on each slate of nominees for election of the Board included in any and all annual meeting proxy statements (or consent solicitations or equivalent documents) delivered by the Company to its stockholders; (iii) to recommend the election of the Nominee to the stockholders of the Company; and (iv) without limiting the foregoing, to otherwise use its reasonable best efforts to cause the Nominee to be elected to the Board in any and all circumstances, including providing at least as high a level of support for the election of such nominee as it provides to any other individual standing for election as a director. Until the Company’s satisfaction of its closing obligations under the Merger Agreement, the Company will not increase the size of the Board to be greater than eight (8) directors without the Holder’s prior written consent.

(ii) The Company acknowledges and agrees that the Nominee will not be removed by the Company without cause without the Holder’s prior written consent.

(iii) The Company acknowledges and agrees that the Nominee will be paid the same non-executive director compensation that the Company pays to its other non-executive directors.

(iv) The parties acknowledge and agree that the Company’s satisfaction of its closing obligations under the Merger Agreement, even if they are in contravention of this Note, will not constitute a breach of this Section 7(f). In the event of any conflict between the terms of this Section 7(f) and the Merger Agreement, the terms of the Merger Agreement will control.

(v) Notwithstanding anything in this Section 7(f) to the contrary, the Company shall have the right to reject any appointment who, after the date hereof, is or becomes an officer, employee or director of, or who has or enters into a contractual relationship with, Motiv Power Systems, Inc.

(g) Board Observer Agreement. The Company shall have delivered evidence to the Holder of the Company’s execution of that certain Board Observer Agreement, of even date herewith (the “**Board Observer Agreement**”), by and among the Company, the Holder and the observer named therein. The Company shall comply with the covenants set forth in the Board Observer Agreement.

8. SECURITY. This Note is secured to the extent and in the manner set forth in the Transaction Documents (including, without limitation, the Security Agreement, the other Security Documents and the Guaranties), and Collateral Agent may exercise all secured creditor rights and remedies provided therein.

9. TAX TREATMENT. The Company and the Holder acknowledge and agree that, for U.S. federal and applicable state income tax purposes, (i) this Note shall be treated as stock that is not “preferred stock” within the meaning of Section 305 of the Code and any applicable regulations promulgated thereunder, (ii) the conversion of the Note pursuant to the terms set forth in Section 3 is expected to be characterized as a “reorganization” within the meaning of Section 368(a)(1)(E) of the Code or otherwise as a non-recognition transaction in which the Holder does not recognize any taxable income or gain, and (iii) all payments made by the Company under this Note shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, duties, levies, imposts, deductions, charges, or withholdings of any nature. The Company agrees to take no positions or actions inconsistent with such treatment, including on any IRS Form 1099, unless otherwise required by (x) a final determination within the meaning of Section 1313 of the Code or (y) a change in law after the date hereof. If any taxes are required to be deducted or withheld by the Company from any amounts payable under this Note, the Company shall pay such additional amounts as may be necessary to ensure that the net amount received by the Holder after such deduction or withholding (including any such Taxes on such additional amounts) shall equal the amount that would have been received in the absence of such deduction or withholding. The Company shall promptly pay the full amount deducted or withheld to the relevant taxation or other authority in accordance with applicable law and shall deliver to the Holder, within thirty (30) days after such payment is made, a receipt or other documentation evidencing such payment.

10. AMENDING THE TERMS OF THIS NOTE. The prior written consent of the Holder shall be required for any change, waiver or amendment to this Note.

11. TRANSFER. This Note and any shares of Holder Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of any Equity Documents and applicable securities laws; provided, however, until the earlier of (i) the Closing and (ii) the date the Merger Agreement is terminated, this Note may only be transferred either (a) with the written consent of the Company or (b) to an “affiliate” (as defined under Rule 144) of the Holder.

12. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder’s right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder’s rights or remedies under such documents or at law or equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company’s compliance with the terms and conditions of this Note.

13. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors’ rights and involving a claim under this Note, then the Company shall pay the reasonable, documented (without having the effect of waiving any attorney-client privilege), out-of-pocket costs incurred (the “**Collection Costs**”) by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys’ fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

14. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms “including,” “includes,” “include” and words of like import shall be construed broadly as if followed by the words “without limitation.” The terms “herein,” “hereunder,” “hereof” and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Issuance Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

15. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

16. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Note must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon receipt, when sent by electronic mail (provided that such sent email is kept on file (whether electronically or otherwise) by the sending party and the sending party does not receive an automatically generated message from the recipient’s email server that such e-mail could not be delivered to such recipient); or (iii) one (1) Business Day after deposit with an overnight courier service with next day delivery specified, in each case, properly addressed to the party to receive the same. The mailing addresses and e-mail addresses for such communications shall be as set forth on the signature pages hereto or to such other mailing address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change.

Written confirmation of receipt (A) given by the recipient of such notice, consent, waiver or other communication, (B) mechanically or electronically generated by the sender's e-mail containing the time, date and recipient's e-mail or (C) provided by an overnight courier service shall be rebuttable evidence of personal service, receipt by e-mail or receipt from an overnight courier service in accordance with clause (i), (ii) or (iii) above, respectively. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars ("U.S. Dollars"), and all amounts owing under this Note shall be paid in U.S. Dollars.

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such place as Holder may from time to time designate in writing to Company, provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day.

17. CANCELLATION. After all Principal, accrued Interest and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

18. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the other Transaction Documents.

19. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Delaware, without giving effect to any provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. The Company hereby irrevocably submits to the exclusive jurisdiction of the Court of Chancery of the State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, to realize on any collateral or any other security for such obligations, or to enforce a judgment or other court ruling in favor of the Holder. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

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

21. MAXIMUM PAYMENTS. Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

22. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

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

(b) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

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

(e) “**Collateral Agent**” means Motive GM Holdings II LLC, as collateral agent under the Security Documents, together with any duly appointed successors and assigns in such capacity.

(f) “**Contingent Obligation**” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(g) “**Conversion Price**” means the price per share of the Standard Stock sold in the Equity Financing multiplied by 90%.

(h) “**Default Rate**” means thirteen percent (13%) per annum.

(i) “**Equity Financing**” means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells common stock or preferred stock; provided, however, Equity Financing shall not include the issuance and sale of shares of common stock of the Company pursuant to the At-the-Market Sales Agreement, dated March 10, 2022, between the Company and BTIG, LLC.

(j) “**Fiscal Quarter**” means each of the fiscal quarters adopted by the Company for financial reporting purposes that correspond to the Company’s fiscal year as of the date hereof that ends on December 31.

(k) “**GAAP**” means United States generally accepted accounting principles, consistently applied.

(l) “**Governmental Entity**” means any nation, state, county, city, town, village, district, or other political jurisdiction of any nature, federal, state, local, municipal, foreign, or other government, governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), multi-national organization or body; or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature or instrumentality of any of the foregoing, including any entity or enterprise owned or controlled by a government or a public international organization or any of the foregoing.

(m) “**Group**” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(n) “**Guaranties**” means that certain Subsidiary Guarantee, dated as of the Issuance Date, made by certain affiliates and subsidiaries of the Company (the “**Guarantors**”) in favor of the Holder and the Collateral Agent, as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

(o) “**Holder Stock**” means the shares of the series of preferred or common stock, as applicable, issued to the Holder in an Equity Financing, having the identical rights, privileges, preferences and restrictions as the shares of Standard Stock, other than, in the event the Holder Stock is preferred stock, with respect to: (i) the per share liquidation preference and the initial conversion price for purposes of price-based anti-dilution protection, which will equal the Conversion Price; and (ii) the basis for any dividend rights, which will be based on the Conversion Price.

(p) “**Indebtedness**” of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, “capital leases” in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

(q) “**Interest Rate**” means, as of any date of determination, eight percent (8%) per annum, subject to adjustment from time to time in accordance with Section 2.

(r) “**Investment**” means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets.

(s) “**Lien**” means any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets.

(t) “**Material Adverse Effect**” means any material adverse effect on (i) the business, properties, assets, liabilities, operations (including results thereof), condition (financial or otherwise) or prospects of the Company or any Subsidiary, individually or taken as a whole, (ii) the transactions contemplated hereby or in any of the other Transaction Documents or any other agreements or instruments to be entered into in connection herewith or therewith or (iii) the authority or ability of the Company or any of its Subsidiaries to perform any of their respective obligations under any of the Transaction Documents (as defined below).

(u) “**Maturity Date**” means the earliest of (i) the date a Termination Fee (as defined in the Merger Agreement), if any, is due and payable by the Company (which for purposes of clarity, shall mean Parent under the Merger Agreement), (ii) the date that is three months following the date of termination of the Merger Agreement, other than a termination by the Company (which for purposes of clarity, shall mean Parent under the Merger Agreement) pursuant to Sections 9.1(d), 9.1(g) or 9.1(i) of the Merger Agreement and (iii) August 15, 2027.

(v) “**Merger Agreement**” means that certain Agreement and Plan of Merger, dated as of the Issuance Date, by and among the Company, Omaha Merger Subsidiary, Inc., a Delaware corporation, Omaha Intermediate, Inc., a Delaware corporation, Omaha Intermediate 2, Inc., a Delaware corporation, and Motiv Power Systems, Inc., a Delaware corporation (“**Motiv**”), as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

(w) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(x) “**Principal Market**” means the Nasdaq Capital Market.

(y) “**Purchase Amount**” means an amount equal to the Principal plus accrued and unpaid Interest.

(z) “**Securities**” means, collectively, the Notes and the Holder Stock.

(aa) “**Security Agreement**” means that certain Security Agreement, dated as of the Issuance Date, made by certain affiliates and subsidiaries of the Company in favor of the Collateral Agent, as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

(bb) “**Security Documents**” means, collectively, the Security Agreement, any mortgage made by the grantors party thereto in favor of the Collateral Agent, the Approved Control Agreements (as defined in the Security Agreement), any Intellectual Property Security Agreements (as described in the Security Agreement) and each other security document and agreement entered into in connection with this Note and each of such other documents and agreements, as each may be amended or modified from time to time.

(cc) “**Senior Notes**” means the First Lien Notes as defined in the Intercreditor Agreement.

(dd) “**Standard Stock**” means the shares of the series of common stock or preferred stock issued to the investors investing new money in the Company in connection with the closing date of the Equity Financing.

(ee) “**Subsidiaries**” means any Person in which the Company, directly or indirectly, (i) owns any of the outstanding capital stock or holds any equity or similar interest of such Person or (ii) controls or operates all or any part of the business, operations or administration of such Person.

(ff) “**Transaction Documents**” means, collectively, this Note, the Security Documents, the Guaranties, the Intercreditor Agreement and each of the other agreements and instruments entered into or delivered by any of the parties hereto in connection with the transactions contemplated hereby and thereby, as may be amended from time to time.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set out above.

WORKHORSE GROUP INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

Address for notices:

Workhorse Group Inc.
Attn:
3600 Park 42 Drive, Suite 160
Sharonville, Ohio 45241
Email: rick.dauch@workhorse.com

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

Taft Stettinius & Hollister LLP
Attn: Arthur McMahon, III
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Email: amcmahon@taftlaw.com

[Signature Page to Note]

The Holder hereby confirms its acceptance of the foregoing Note, and its agreement with the terms, provisions, covenants and agreements set forth therein, as of the date first above written.

MOTIVE GM HOLDINGS II LLC

By: /s/ [Omitted.]
Name: [Omitted.]
Title: Manager

Address for notices:

Motive GM Holdings II LLC
[Omitted.]

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

DLA Piper LLP (US)
Attention: Kira Mineroff
51 John F. Kennedy Parkway
Suite 120
Short Hills, NJ 07078-2704
Email: kira.mineroff@us.dlapiper.com

DLA Piper LLP (US)
Attention: Brent L. Bernell
DLA Piper LLP (US)
303 Colorado Street
Suite 3000
Austin, TX 78701-4653
Email: brent.bernell@us.dlapiper.com

[Signature Page to Note]

SECURITY AGREEMENT

Dated August 15, 2025

From

The Grantors referred to herein,

as Grantors

to

Motive GM Holdings II LLC,

as Collateral Agent

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SECURITY AGREEMENT

This SECURITY AGREEMENT dated August 15, 2025 (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), is made by Workhorse Group Inc., a Nevada corporation (“**Company**”), Workhorse Technologies Inc., an Ohio corporation (“**WTF**”), Workhorse Motor Works Inc, an Indiana corporation (“**WMW**”), Workhorse Properties Inc., an Ohio corporation (“**WPI**”), Horsefly Inc., a Nevada corporation (“**Horsefly**”), Stables & Stalls LLC, a Delaware limited liability company (“**Stables**”), Stables & Stalls Real Estate I LLC, a Delaware limited liability company (“**Stables Real Estate**”), RouteHorse LLC, a Delaware limited liability company (“**RouteHorse**”) and ESG Logistics Corp., an Ohio corporation (“**ESG**”), Omaha Merger Subsidiary, Inc., a Delaware corporation (“**Merger Sub**”), Omaha Intermediate, Inc., a Delaware corporation (“**OI**”), and Omaha Intermediate 2, Inc., a Delaware corporation (“**OI2**”) and together with Company, WTF, WMW, WPI, Horsefly, Stables, Stables Real Estate, RouteHorse, Merger Sub, OI and each such Additional Grantor, collectively, the “**Grantors**”), to Motive GM Holdings II LLC, as collateral agent (in such capacity, together with any duly appointed successors and assigns, the “**Collateral Agent**”) for the benefit of the Secured Parties.

PRELIMINARY STATEMENTS

(1) Company has agreed to issue to Motive GM Holdings II LLC (in such capacity, together with its successors and assigns, the “**Holder**”) a certain subordinated secured convertible note in an aggregate original principal amount of \$5,000,000, dated as of even date herewith (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Note**”);

(2) Company is a member of an affiliated group of companies that includes each other Grantor;

(3) It is a condition precedent to the issuance of the Note that the Grantors shall have granted the security interests contemplated by this Agreement to the Collateral Agent for the benefit of the Secured Parties;

(4) Each Grantor will derive substantial direct or indirect benefit from the transactions contemplated by this Agreement, the Note and the other Transaction Documents;

(5) Certain capitalized terms used but not defined herein shall have the meanings assigned in the Note or Attachment I to this Agreement. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Further, unless otherwise defined in this Agreement or in the Note, terms defined in Article 8 or 9 of the UCC (as defined below) are used in this Agreement (whether or not capitalized) as such terms are defined in such Article 8 or 9. “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of Delaware; provided, that, if perfection or the effect of perfection or non-perfection or the priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Delaware, “**UCC**” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound hereby, the Company and each other Grantor hereby agrees with the Collateral Agent for the benefit of the Secured Parties as follows:

Section 1. Grant of Security. Each Grantor hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in such Grantor's right, title and interest in and to each type of property described below, or in which or to which such Grantor has any rights, whether now owned or hereafter acquired by such Grantor, wherever located, and whether now or hereafter existing or arising (collectively, the "**Collateral**"):

(a) all equipment in all of its forms, including all machinery, chattels, tools, parts, machine tools, motor vehicles, aircraft, rolling stock, furniture, furnishings, fixtures and supplies of every nature, and all parts thereof and all accessions thereto, including computer programs and supporting information, all rights under or arising out of contracts relating to the foregoing, and anything else that constitutes "Equipment" within the meaning of the UCC (any and all such property being the "**Equipment**");

(b) all inventory in all of its forms, including (i) all raw materials, work in process, finished goods and materials used or consumed in the manufacture, production, preparation or shipping thereof, (ii) goods in which such Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in which such Grantor has an interest or right as consignee) and (iii) goods that are returned to or repossessed or stopped in transit by such Grantor, and all accessions thereto and products thereof and documents therefor, including computer programs and supporting information and anything else that constitutes "Inventory" within the meaning of the UCC (any and all such property being the "**Inventory**");

(c) (i) all accounts (including any "Accounts" within the meaning of the UCC), accounts receivable, instruments (including promissory notes), chattel paper, general intangibles (including payment intangibles) and other obligations of any kind owing to such Grantor, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance (any and all such instruments, chattel paper, general intangibles and other obligations to the extent not referred to in clause (d), (e), (f) or (g) below, being the "**Receivables**"), and all supporting obligations, security agreements, Liens, leases, letter-of-credit rights and other contracts owing to the Grantors or supporting the obligations owing to such Grantor under the foregoing (collectively, the "**Related Contracts**"), and (ii) all commercial tort claims now or hereafter described on Schedule XI in accordance with Section 5(i);

(d) the following (the "**Security Collateral**"):

(i) all indebtedness from time to time owed to such Grantor and the instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness (collectively, the "**Pledged Debt**");

(ii) all investment property (as defined in the UCC), including any securities accounts, commodity accounts, and the financial assets credited thereto and the security entitlements, commodity contracts, carried in, or from time to time credited to, as applicable, such securities account, and the certificates or instruments, if any, representing or evidencing such investment property, all financial assets, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such security entitlements, commodity contracts or financial assets and all warrants, rights or options issued thereon with respect thereto (collectively, the "**Investment Property**");

(iii) all certificated securities and any other Equity Interests of any Person evidenced by a certificate, instrument or other similar document (as defined in the UCC), in each case owned by such Grantor, including all Equity Interests listed on Schedule I (collectively, the “**Pledged Certificated Stock**”), and any distribution of property made on, in respect of or in exchange for the foregoing from time to time; and

(iv) any Equity Interests of any Person that are not Pledged Certificated Stock, including all right, title and interest of such Grantor as a limited or general partner in any partnership not constituting Pledged Certificated Stock or as a member of any limited liability company, all right, title and interest of such Grantor in, to and under any Organizational Document of any partnership or limited liability company to which it is a party, including in each case those interests set forth on Schedule I, to the extent such interests are not certificated (collectively, “**Pledged Uncertificated Stock**” and together with Pledged Certificated Stock, the “**Pledged Stock**”), and any distribution of property made on, in respect of or in exchange for the foregoing from time to time;

(e) the following (collectively, the “**Account Collateral**”):

(i) all deposit accounts maintained by any bank by or for the benefit of such Grantor, all funds and financial assets from time to time credited thereto (including all cash equivalents), and all certificates and instruments, if any, from time to time representing or evidencing such deposit accounts (the “**Deposit Accounts**”);

(ii) all promissory notes, certificates of deposit, checks and other instruments from time to time delivered to or otherwise possessed by the Collateral Agent for or on behalf of such Grantor in substitution for or in addition to any or all of the then existing Account Collateral; and

(iii) all interest, dividends, distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing Account Collateral;

(f) all documents, all money, cash and cash equivalents and all letter-of-credit rights;

(g) all Intellectual Property, including the registered patents and patent applications listed on Schedule V hereto, the registered copyrights and copyright applications listed on Schedule VI hereto, the registered trademarks and trademark applications listed on Schedule VII, the unregistered Intellectual Property and proprietary software listed on Schedule VIII hereto and the IP Licenses, including as listed on Schedule IX hereto;

(h) all books and records and documents (including databases, customer lists, credit files, computer files, printouts, other computer output materials and records and other records) of such Grantor pertaining to any of such Grantor's Collateral;

(i) all other goods and property not otherwise described above;

(j) all insurance payments, proceeds, refunds, and premium rebates (including, without limitation, with respect to business interruption insurance), whether or not any of such payments, proceeds, refunds, and premium rebates arise out of any of the foregoing and whether or not the Collateral Agent is the lender loss payee or loss payee thereof, and all other payments, proceeds, refunds and premium rebates with respect to any indemnity, warranty or guaranty by reason of loss or damage to or otherwise with respect to the Collateral;

(k) all general intangibles;

(l) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral (including proceeds, collateral and supporting obligations that constitute property of the types described in clauses (a) through (k) of this Section 1); and

(m) to the extent not otherwise included, all (A) accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, commercial tort claims, letter-of-credit rights, goods, general intangibles and supporting obligations (each term in this clause (A) having the meaning given to it under the UCC), (B) payments under insurance (whether or not the Collateral Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral and (C) cash and cash equivalents.

Notwithstanding anything herein or in any Transaction Document to the contrary, no Excluded Property shall constitute Collateral under this Agreement; provided that, each Grantor agrees to, and to cause its Subsidiaries to, use commercially reasonable efforts to exclude any provisions from any lease, license, contract, IP License or other agreement to be entered into by such Person in the future (or to provide specific exceptions thereto for the Liens of the Collateral Agent hereunder to permit the inclusion thereof within Collateral for purposes hereof) which would cause such lease, license, contract, IP License or other agreement to be Excluded Property and, in any event use commercially reasonable efforts to give written notice to the Collateral Agent prior to entering into any license, contract, agreement, IP License or other agreement involving property, Intellectual Property or otherwise material to such Grantor's business which contains any such restriction on the grant of a security interest therein and would be Excluded Property and, in any event use commercially reasonable efforts to give written notice to the Collateral Agent prior to entering into any license, contract, agreement, IP License or other agreement involving property, Intellectual Property or otherwise material to such Grantor's business which constitutes any such restriction on the grant of a security interest therein and would be Excluded Property.

Section 2. Security for Obligations. The Collateral secures and will secure all debts, obligations, liabilities, covenants and duties of every kind now or hereafter existing, absolute or contingent owed at any time to the Secured Parties by the Grantors under the Note, the Guaranties and/or each other Transaction Document (the "**Obligations**"), or otherwise (whether or not evidenced by any note, indenture, guaranty or other agreement), whether principal, interest (including Default Rate interest), fees, costs, expenses, including without limitation reasonable and documented (without having the effect of waiving any attorney-client privilege) outside attorneys' fees and expenses. Without limiting the generality of the foregoing, the Collateral secures, as to each Grantor, the payment of all amounts that constitute part of the Obligations and would be owed by such Grantor or any Subsidiary of the Company, as applicable, to any Secured Party but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any of the Company, the Grantors and other Subsidiaries of the Company.

Section 3. Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable for all obligations under or with respect to the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent, (b) each Grantor shall remain liable under the contracts and agreements included in such Grantor's Collateral to perform all of its duties and obligations thereunder to the extent set forth therein to the same extent as if this Agreement had not been executed, (c) the exercise by the Collateral Agent of any of the rights or remedies hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, (d) neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement or any other Transaction Document, nor shall the Collateral Agent or any Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to make any inquiry as to the nature or sufficiency of any payment received by it or any Secured Party or to take any action to collect or enforce any claim for payment assigned hereunder or any rights under any contract or agreement included in the Collateral and (e) each Grantor agrees to indemnify and hold harmless the Collateral Agent and the other Secured Parties from and against any and all liability for such performance except to the extent caused by the gross negligence or willful misconduct of the Collateral Agent or a Secured Party (as determined by the final non-appealable judgment or order of a court of competent jurisdiction). The Collateral Agent shall not be obligated to assume any obligation or liability under any contracts and agreements included in the Collateral unless the Collateral Agent otherwise expressly agrees in writing to assume any or all of said obligations.

Section 4. Delivery and Control of Certain Instruments, Deposit Accounts and Security Collateral. All certificates or instruments, if any, representing or evidencing (i) Pledged Certificated Stock and (ii) Pledged Debt or other Security Collateral (other than Pledged Certificated Stock) shall be promptly (but in any event within ten (10) Business Days of receipt thereof by any Grantor) delivered to and held by or on behalf of the Collateral Agent pursuant hereto and shall be in suitable form for effective transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, except to the extent that such transfer or assignment is prohibited by Applicable Law. Within twenty (20) days of the Issuance Date (or, with respect to any deposit, securities, commodity or similar account opened or acquired after the Issuance Date, within twenty (20) days of the opening or acquisition of such account), each Grantor shall enter into, and cause each depository, securities intermediary or commodities intermediary to enter into, Approved Control Agreements with respect to each deposit, securities, commodity or similar account (other than Excluded Accounts) located in the United States maintained by such Person to cause the Collateral Agent to obtain control of any such account maintained by such Grantor, pursuant to which such depository, securities intermediary or commodities intermediary shall agree to comply with any order or instruction of the Collateral Agent without further consent by any Grantor with respect to any such account (other than Excluded Accounts) as of the effective date of such control agreement or as of the date otherwise specified in such control agreement.

Section 5. Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Such Grantor's exact legal name, chief executive office or sole place of business, organizational identification number, if any, type of organization, jurisdiction of organization and Federal Employer Identification Number, if applicable, as of the date hereof is set forth in Schedule III hereto. Within the five years preceding the date hereof, such Grantor has not changed its legal name, chief executive office or sole place of business, type of organization, jurisdiction of organization or Federal Employer Identification Number from those set forth in Schedule III hereto except as set forth in Schedule III hereto. Each of the trade names owned and used by any Grantor in the operation of its business (e.g. billing, advertising, etc.) are set forth in Schedule III hereto.

(b) Within the five years preceding the date hereof, no Grantor has entered into any mergers or acquisitions, except as set forth in Schedule III hereto.

(c) The books and records of the Grantors pertaining to accounts, contract rights, inventory, and other assets are located at the addresses indicated on Schedule III hereto.

(d) Such Grantor is the legal and beneficial owner of the Collateral and has rights in, the power to transfer, or a valid right to use, the Collateral with respect to which it has purported to grant a security interest hereunder, and has full power and authority to grant to the Collateral Agent the security interest in such Collateral granted hereunder pursuant to the terms hereof.

(e) This Agreement creates in favor of the Collateral Agent, for the benefit of the Secured Parties, a valid security interest in the Collateral granted by such Grantor under this Agreement, securing the payment of the Obligations. Upon the filing of (i) financing statements naming such Grantor as debtor and the Collateral Agent as secured party and providing a description of the Collateral with respect to which such Grantor has purported to grant a security interest hereunder in the appropriate offices against such Grantor in the locations listed on Schedule IV, (ii) in the case of the Intellectual Property that is registered or is the subject of an application for registration in the United States that constitutes Collateral, the filing of financing statements under the UCC in the locations listed on Schedule IV and the recording of a duly executed and delivered Intellectual Property Security Agreement substantially in the form attached hereto as Exhibit A with the U.S. Patent and Trademark Office or the U.S. Copyright Office, as applicable, (iii) in the case of any deposit accounts or securities accounts located in the United States (other than Excluded Accounts), the execution of Approved Control Agreements and (iv) in the case of all certificates or instruments representing or evidencing any Pledged Certificated Stock, Pledged Debt or other Security Collateral, the delivery thereof to the Collateral Agent of such certificates or instruments, in each case in suitable form for effective transfer by delivery or properly endorsed for transfer in blank, then the Collateral Agent will have a fully perfected security interest in that Collateral of such Grantor in which a security interest may be perfected by the actions set forth above in this clause (e), as applicable.

(f) All of such Grantor's locations where Equipment or Inventory is located as of the date hereof are specified in Schedule X hereto (other than Equipment or Inventory in transit in the ordinary course of business, temporarily in use or on display at any trade show, conference or similar event in the ordinary course of business, de minimis Equipment and Inventory maintained with customers (or otherwise on the premises of customers) and consignees on a temporary basis in the ordinary course of business or in the possession of employees in the ordinary course of business). Such Grantor has exclusive possession and control of its Inventory, other than Inventory stored at any third-party warehouse set forth on Schedule X hereto.

(g) No Receivable is evidenced by a promissory note or other instrument that has not been delivered to the First Lien Agent (as defined in the Intercreditor Agreement) (the "**Senior Agent**") or the Collateral Agent. All such Receivables evidenced by a promissory note or other instrument are listed on Schedule II hereto.

(h) Any (i) Pledged Certificated Stock and (ii) Pledged Debt or other Security Collateral represented or evidenced by a certificate or instrument, in each case under clauses (i) and (ii), have been delivered to the Senior Agent or the Collateral Agent. All (x) Pledged Certificated Stock and (y) Pledged Debt or other Security Collateral represented or evidenced by a certificate or instrument, in each case under this clause (y), are listed on Schedule I hereto. The Pledged Stock pledged by such Grantor hereunder (i) is listed on Schedule I and constitutes that percentage of the issued and outstanding equity of all classes of each issuer thereof as set forth on Schedule I, (ii) has been duly authorized, validly issued and is fully paid and non-assessable (other than Pledged Stock in limited liability companies and partnerships), (iii) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms and (iv) with respect to Pledged Certificated Stock, has been delivered to the Senior Agent or the Collateral Agent properly endorsed for transfer in blank.

(i) Such Grantor is not a beneficiary or assignee under any letter of credit as of the date hereof, other than the letters of credit described in Schedule XI hereto. Such Grantor has no commercial tort claims that have been filed with any court, other than the commercial tort claims listed on Schedule XI.

(j) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for (i) the grant by such Grantor of the security interest granted hereunder or for the execution, delivery or performance of this Agreement by such Grantor, (ii) the perfection or maintenance of the security interest created hereunder to the extent the Company or any other Grantor is required under this Agreement to perfect the security interest in any Collateral and (iii) the exercise by the Collateral Agent of any rights or remedies in respect of any Collateral pursuant to this Agreement, in each case except for (x) the filings contemplated by Section 5(e) and (y) as may be required in connection with the disposition of any portion of the Security Collateral by laws affecting the offering and sale of securities generally.

(k) Intellectual Property.

(i) Schedule V (Patents), Schedule VI (Copyrights), and Schedule VII (Trademarks) collectively set forth a true and complete list of the registered and pending applications for registration of Intellectual Property owned by each Grantor, and including for each of the foregoing items, where applicable, (1) the owner, (2) the title, (3) the jurisdiction in which such item has been registered or otherwise arises or in which an application for registration has been filed and (4) as applicable, the registration or application number and registration or application date. All registered or issued Intellectual Property and pending applications for registration of Intellectual Property owned by any Grantor set forth on Schedule V (Patents), Schedule VI (Copyrights), and Schedule VII (Trademarks) is valid, subsisting, unexpired and enforceable and has not been abandoned. Each Grantor has made or performed all commercially reasonable acts, including without limitation filings, recordings and payment of all required fees and taxes, required to maintain and protect its interest in each and every item of Intellectual Property set forth on Schedule V (Patents), Schedule VI (Copyrights), and Schedule VII (Trademarks). Schedule VIII (Unregistered Intellectual Property and Proprietary Software) sets forth a true and complete list of material unregistered Intellectual Property (including unregistered but material Patents, Copyrights, Trademarks, domain names, proprietary software, and proprietary databases, datasets and data).

(ii) Schedule IX sets forth a true and complete list of all Material IP Agreements, including agreements under which: (1) any Grantor uses or has the right to use any Material IP owned by a third party; (2) any Grantor has granted a license or sublicense to any third party to use any Material IP (excluding any agreements under which such Grantor has licensed its products to customers, distributors, contract manufacturers, consultants or development partners on a non-exclusive basis in the ordinary course of business); and (3) any Material IP is or has been developed by or for any Grantor or assigned to any Grantor (other than agreements with consultants, employees or individual contractors engaged in connection with the development of Intellectual Property on a form made available to Collateral Agent). Except as set forth in Schedule IX, none of the Intellectual Property of any Grantor is the subject of any license, sublicense or agreement pursuant to which such Grantor is the licensor. No Grantor has received any written notice of termination or cancellation under any IP License, or is in breach or in violation, in any material respect of any IP License, and, to each Grantor's knowledge, no third party is in breach or violation, in any material respect, of any IP License.

(iii) Each Grantor owns and possesses or has a license or other right to use all Intellectual Property as is necessary for the conduct of the businesses of the Company and its Subsidiaries, taken as a whole, and exercises such license or right without any infringement, misappropriation, violation, or dilution upon Intellectual Property rights of others.

(iv) No holding, decision or judgment has been rendered by any Governmental Authority against any Grantor which limits, cancels or questions the validity of, or any Grantor's rights in, any material Intellectual Property owned by any Grantor. No action or proceeding is pending, or threatened, as of the date hereof seeking to limit, cancel or question the validity of, or any Grantor's ownership interest in, any Intellectual Property owned by any Grantor. There is no valid basis for any such litigation, opposition, cancellation, proceeding, objection or claim.

(v) No Grantor nor the conduct or operation of any Grantor's business, nor any product or service of any Grantor has in the past or is currently infringes, violates or misappropriates the Intellectual Property rights of any other Person. No action or proceeding is pending, or threatened, as of the date hereof alleging any Grantor, the conduct of the businesses of such Grantor, or any Grantor product or service infringes, violates or misappropriates the Intellectual Property rights of any other Person. Except for the Lien of the Senior Agent, there are no facts or circumstances that would reasonably give rise to any claim that any Grantor does not have the exclusive, legal right to own, enforce, sell, encumber, license, sublicense, lease or otherwise use or transfer any Material IP owned or purported to be owned by any Grantor.

(vi) Each Grantor has taken all reasonable measures and has reasonable policies and internal procedures (as necessary and/or as required by Applicable Law) to maintain and protect the confidentiality and value of all Trade Secrets that are owned, used or held by Grantors, and, to each Grantor's knowledge, such Trade Secrets have not been used, disclosed to or discovered by any Person except with proper authorization pursuant to a valid and appropriate non-disclosure and/or license agreement which have not been breached. No Grantor has received any notice from any third party that there has been an unauthorized use or disclosure of any Trade Secrets in relation to the business of any Grantor.

(vii) The IT Assets operate and perform in all reasonable material respects in accordance with the purpose for which they were acquired, and have not materially malfunctioned or failed within the past three (3) years. To each Grantor's knowledge, no Person has gained unauthorized access to the IT Assets. The Grantors have implemented reasonable backup and disaster recovery technology consistent with industry practices.

(viii) All employees and contractors of each Grantor who were involved in the creation or development of any Intellectual Property for such Grantor that is necessary to the business of such Grantor have signed valid and enforceable written agreements with such Grantor validly and presently assigning all Intellectual Property rights to such Grantor and containing obligations of confidentiality. No former or current employee or contractor of any Grantor is in violation of any term of such agreement, and no former or current employee or contractor of any Grantor has asserted in writing against any Grantor any claim or right to any of the material Intellectual Property owned or purported to be owned by any Grantor.

(ix) No Material IP owned by any Grantor has been developed, created, or modified with any funding from any governmental entity or academic institution. No Person who was involved in, or who contributed to the creation or development of any Material IP owned by any Grantor, has performed services for the government, university, college, or other educational institution or research center in a manner that would affect any Grantor's rights in any Material IP owned by any Grantor or restrict the manner in which rights are currently used or contemplated to be used in the operation of any Grantor's business.

(x) No proprietary software owned by or distributed to any customers by any Grantor is subject to any obligation or condition under any "open source" license, such as the GNU Public License, Lesser GNU Public License or Mozilla Public License, that would require or condition the use or distribution of such software on the disclosure, license or distribution of any source code for any portion of such software that is owned by such Grantor. No event has occurred, and no circumstance exists, that will, or could result in the disclosure or delivery to any third party of any proprietary software source code owned by or exclusively licensed to any Grantor. No product, service, system, program or software module associated with any software owned by any Grantor that has been distributed, licensed, or otherwise made available by, any Grantor to any third party, contains any harmful code. Each Grantor is in actual possession of and has sufficient control and rights over, and has complete, valid and enforceable rights to use without restriction, a complete and correct copy of all proprietary software including any source code, netlists, mask works, algorithms, data, data sets and databases used in, held for use in, or necessary for the conduct of the business of any Grantors including, in each case, that of its employees and customers.

(xi) The consummation of the transactions contemplated by any Transaction Document shall not result in any breach or default of any IP License or limit or impair the ownership, use (other than restrictions set forth in any Transaction Document, if any), validity or enforceability of, or any rights of any Grantor in, any Intellectual Property.

(xii) Except as set forth on Schedule XII, there are no Government Contracts payable to any Grantor.

(xiii) No Grantor owns any real property.

Section 6. Further Assurances.

(a) Each Grantor agrees that from time to time, in accordance with the terms of this Agreement, at the sole expense of such Grantor, such Grantor will promptly execute and deliver, or otherwise authenticate, all further instruments and documents, and take all further action that may be reasonably necessary, advisable, or desirable, or that the Collateral Agent or Holder may reasonably request, in order to create and/or maintain the validity, perfection or priority of any pledge or security interest granted or purported to be granted by such Grantor hereunder or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral of such Grantor. Subject to the rights and requirements of, and limitations imposed by the Intercreditor Agreement, each Grantor shall (i) execute and deliver to the Collateral Agent evidence that such other agreements, instruments, endorsements, powers of attorney, documents or notices, as may be reasonably necessary or desirable, or as the Collateral Agent or the Holder may reasonably request, in each case in accordance with the terms of this Agreement in order to effect, reflect, perfect and preserve the security interest and the rights and remedies granted or purported to be granted by such Grantor under this Agreement has been taken, including the payment of any fees and taxes required in connection with the execution and delivery of this Agreement, the granting of the security interests and the filing of any financing statements (including fixture filings) or other documents in connection herewith or therewith, and each Grantor shall, at the Grantor's expense, reasonably appear in, and defend, any action or proceeding that may affect the Collateral Agent's security interests in all or any material part of the Collateral and (ii) upon reasonable request of the Collateral Agent or the Holder, obtain landlord waivers, collateral access agreements, third party lien waivers or other consents with respect to the Collateral or locations at which the Collateral (or books and records pertaining to the Collateral) is located in each case in excess of \$250,000, in form and substance satisfactory to the Collateral Agent.

(b) Notwithstanding the grants of authority to the Collateral Agent herein, each Grantor hereby authorizes the Collateral Agent (or its designee), at the Grantors' expense, to file one or more financing or continuation statements, intellectual property security agreements and amendments or supplements thereto in any jurisdiction and with any filing offices as the Collateral Agent or the Holder may determine, in its sole discretion, are necessary or advisable to perfect any security interests granted to the Collateral Agent herein, without the signature of such Grantor, and such financing statements, continuation statements and amendments or supplements may describe the Collateral in the same manner as described herein or may contain an indication or description of the Collateral that describes such property in any other manner as Collateral Agent or the Holder may reasonably determine is necessary, advisable or prudent to ensure the perfection of the security interests in the Collateral granted to the Collateral Agent herein, including describing such property as "all assets of the debtor whether now owned or hereafter arising or acquired, including all proceeds thereof" or words of similar import. Notwithstanding anything to the contrary contained herein or in any other Transaction Document, neither the Collateral Agent nor the Holder shall have any responsibility for the preparing, recording, filing, rerecording, or refiling of any financing statements (supplements, amendments or continuations) or other instruments or documents in any public office or for the perfection or maintenance of any security interest created hereunder, which shall be the responsibility of the Grantors.

(c) Each Grantor will furnish to the Collateral Agent on an annual basis not more than 45 days after March 31 of each fiscal year (beginning with September 30, 2025), supplements to Schedules I–XIII hereto which identify and describe, as of such March 31, any new Collateral acquired by such Grantor since the supplements most recently delivered pursuant to this Section 6(c) (unless such new Collateral is disposed by the Grantor), and such other information in connection with such new Collateral listed on such supplements as the Collateral Agent or the Holder may reasonably request, and such other reports in connection with the Collateral as the Collateral Agent or the Holder may reasonably request, all in reasonable detail.

Section 7. As to Equipment and Inventory.

(a) Each Grantor will keep its Equipment and Inventory (other than Equipment or Inventory in transit in the ordinary course of business, temporarily in use or on display at any trade show, conference or similar event in the ordinary course of business, de minimis Equipment and Inventory maintained with customers (or otherwise on the premises of customers) and consignees on a temporary basis in the ordinary course of business or in the possession of employees in the ordinary course of business) at the locations therefor specified in Schedule X, or at such other locations designated by such Grantor in a written notice provided to the Collateral Agent and the Holder within thirty (30) days of when the value of Equipment or Inventory at such other location exceeds \$250,000. Schedule X sets forth whether each such location is owned, leased or operated by third parties, and, if leased or operated by third parties, the names and addresses of such third parties.

(b) Each Grantor will pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, its Equipment and Inventory, except to the extent payment thereof (i) would not reasonably be expected to have a Material Adverse Effect or (ii) is being contested in good faith by appropriate proceedings and as to which appropriate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made. In producing its Inventory, each Grantor will comply with all requirements of Applicable Law, except where the failure to so comply would not reasonably be expected to have a Material Adverse Effect.

Section 8. Intellectual Property.

(a) As of the Issuance Date, each Grantor shall execute and deliver to Collateral Agent an intellectual property security agreement in the form set forth on Exhibit A and suitable for filing in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, which shall include all of each Grantor's registered Intellectual Property, that is registered or is the subject of an application for registration, in existence on the Issuance Date to the extent such Intellectual Property does not constitute Excluded Property. Each applicable Grantor hereby authorizes the Collateral Agent to promptly file such intellectual property security agreements in the United States Patent and Trademark Office or the United States Copyright Office. Within 45 days after each March 31 and September 30 following the Issuance Date (beginning with September 30, 2025), each Grantor shall notify the Collateral Agent in writing of any additional Intellectual Property that is registered or is the subject of an application for registration, material IP Licenses, or material proprietary software owned or acquired by any Grantor during the most recently ended six-month period ended March 31 or September 30 (beginning with September 30, 2025) and continuing in such Grantor's possession as of the date of such notification and with respect to such registered Intellectual Property that is registered or is the subject of an application for registration, material IP Licenses, and material proprietary software that would represent a change to Schedules V-IX, shall also provide the Collateral Agent with the duly executed and delivered intellectual property security agreement in respect of such additional Intellectual Property, to the extent such additional Intellectual Property does not constitute Excluded Property, substantially in the form attached hereto as Exhibit A, which the Collateral Agent shall be authorized to promptly file in the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

(b) Each Grantor shall (and shall cause all its licensees to) (1) continue to use each Trademark owned by such Grantor and/or necessary for the conduct of its business in order to maintain such Trademark in full force and effect with respect to each class of goods for which such Trademark is currently used, free from any claim of abandonment for non-use, (2) maintain at least the same standards of quality of products and services offered under such Trademark as are currently maintained, (3) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (4) not adopt or use any other Trademark that is confusingly similar or a colorable imitation of such Trademark unless the Collateral Agent shall obtain a perfected security interest in such other Trademark pursuant to this Agreement and (5) not knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any material way other than in the ordinary course of business, in each case with respect to Trademarks that are material, individually or in the aggregate, to the conduct of the business of such Grantor.

(c) Each Grantor (either itself or through its licensees) shall not do any act, or knowingly omit to do any act, whereby any Patent necessary for the conduct of its business may become forfeited, abandoned or dedicated to the public, except to the extent that such Grantor determines in its reasonable business judgment that such Patent is no longer necessary for the conduct of the business of such Grantor.

(d) Each Grantor (either itself or through its licensees) (i) shall employ each Copyright necessary for the conduct of its business and (ii) shall not (and shall not permit any licensee or sublicensee thereof to) do any act or omit to do any act whereby any portion of such Copyrights owned by such Grantor may become invalidated or otherwise materially impaired, except to the extent that such Grantor determines in its reasonable business judgment that such Copyright is no longer necessary for the conduct of its business. Such Grantor shall not (either itself or through its licensees) do any act whereby any material portion of such Copyrights may fall into the public domain except to the extent that such Grantor determines in its reasonable business judgment that such Copyright is no longer necessary for the conduct of its business.

(e) Each Grantor (either itself or through its licensees) shall not do any act that knowingly uses any Intellectual Property which infringes, misappropriates, violates or dilutes the Intellectual Property rights of any other Person.

(f) Each Grantor will notify Collateral Agent promptly if it knows that any application or registration relating to any Intellectual Property owned by such Grantor and necessary for the conduct of its business is, against such Grantor's will or intention, reasonably likely to become forfeited, abandoned or dedicated to the public domain, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any Intellectual Property necessary for the conduct of its business or such Grantor's right to register the same or to own and maintain the same.

(g) Each Grantor will take all reasonable and necessary steps to maintain and pursue each application (and to obtain the relevant registration) and to maintain each such registration of all Intellectual Property owned by it and necessary for the conduct of its business, except to the extent that such Grantor determines in its reasonable business judgment that such Intellectual Property is no longer material to, or necessary for the conduct of such Grantor's business. Each Grantor shall, to the extent commercially reasonable and in such Grantor's good faith business judgment: (i) file and prosecute diligently any Patent, Trademark, and/or Copyright applications pending as of the date hereof or hereafter that are material to conduct of its business or necessary for the conduct of its business, (ii) make applications on unpatented but patentable inventions on Trademarks that are material to its business or necessary for the conduct of its business and on Copyrights that are material to the conduct of its business or necessary for the conduct of its business and (iii) preserve and maintain all rights in the Intellectual Property (including, but not limited to, with respect to Trademarks, the filing of affidavits of use and incontestability, where applicable, under §§8 and 15 of the Lanham Act (15 U.S.C. § 1058, 1065) and renewals and, to the extent commercially reasonable, initiating opposition or cancellation proceedings or litigation against users of the same or confusingly similar marks who seriously threaten the validity or rights of such Grantor in its Trademarks). Any and all costs and expenses incurred in connection with any Grantor's obligations under this Section shall be borne by such Grantor.

(h) Each Grantor shall take reasonable steps to maintain the confidentiality of, and otherwise protect and enforce its rights in, the Intellectual Property that is necessary in the conduct of such Grantor's business, including, as applicable, (i) protecting the secrecy and confidentiality of its confidential information and Trade Secret rights by having and enforcing a policy requiring all employees, consultants, licensees, vendors and contractors with access to such information to execute appropriate confidentiality agreements; (ii) taking actions reasonably necessary to ensure that no material Trade Secret falls into the public domain; and (iii) protecting the secrecy and confidentiality of the source code of all software programs and applications of which it is the owner or licensee by having and enforcing a policy requiring any licensees (or sublicensees) of such source code to enter into license agreements with commercially reasonable use and non-disclosure restrictions.

(i) In the event that any Intellectual Property owned by any Grantor is, to the knowledge of such Grantor, infringed upon, misappropriated, violated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is material to, or necessary for the conduct of, such Grantor's business, promptly notify Collateral Agent after it learns thereof and, to the extent, in its reasonable business judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation, violation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation, violation or dilution.

(j) Grantors acknowledge and agree that Collateral Agent shall have no duties with respect to the Trademarks, Patents, Copyrights, or IP Licenses. Without limiting the generality of this Section 8(j), Grantors acknowledge and agree that Collateral Agent shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks, Patents, Copyrights, or IP Licenses against any other Person, but and after the occurrence and during the continuance of an Event of Default, the Collateral Agent may do so and shall do so if directed by the Holder, and all expenses incurred in connection therewith (including reasonable and documented (without having the effect of waiving any attorney-client privilege) fees and expenses of outside attorneys and other professionals) shall be solely at the cost of the Grantors.

(k) Each Grantor agrees to the foregoing with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Grantor's business.

Section 9. Insurance. Each Grantor will, at its own expense, maintain insurance respecting its property and assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks ordinarily insured against by Persons engaged in the same or similar businesses. Each Guarantor shall also maintain business interruption and general commercial liability insurance. All such policies of insurance shall be with such insurance companies as are reasonably satisfactory to the Collateral Agent. Within ten (10) Business Days following the Issuance Date, each Grantor shall deliver to the Holder and the Collateral Agent certificates of insurance coverage evidencing that such Grantor and each of its Subsidiaries are carrying insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and naming the Collateral Agent as lender loss payee on all policies of property and additional insured on all policies of liability insurance.

Section 10. Post-Closing Changes: Collections on Receivables.

(a) If any Grantor changes its name, type of organization, chief executive office or sole place of business, organizational identification number, Federal employer identification number or jurisdiction of organization from those set forth in Schedule III, it will give prior written notice to the Collateral Agent at least fifteen (15) days prior to such change and will promptly thereafter take all action reasonably necessary to maintain the perfection of the Collateral Agent's security interest hereunder and any other reasonably necessary, advisable, or desirable actions requested by the Collateral Agent or the Holder for the purpose of perfecting or protecting the security interest granted by this Agreement in accordance with the terms of this Agreement, including filing UCC-1 financing statements or UCC-3 statements of amendment in such offices as may be necessary. Each Grantor will hold and preserve its records relating to the Collateral, including the Related Contracts, and will permit representatives of the Collateral Agent (or its designees) to inspect such records and other documents upon reasonable advance written notice to such Grantor and during such Grantor's regular business hours.

(b) Upon the occurrence and during the continuance of any Event of Default, the Collateral Agent may (but shall not be obligated to) from time to time, in Collateral Agent's name or in the name of a nominee of Collateral Agent, verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise (provided any visits shall be done during normal business hours and at times to be mutually agreed). Except as otherwise provided in this subsection (b), each Grantor, at its own expense and in the ordinary course of business undertaken in a commercially reasonable manner and consistent with Applicable Law, will continue to collect, adjust, settle, compromise the amount or payment of, all amounts due or to become due such Grantor under the Receivables. In connection with such collections, adjustments, settlements, compromises and other exercises of rights, such Grantor may take such action as such Grantor may deem necessary or advisable; provided that the Collateral Agent shall have the right at any time upon the occurrence and during the continuance of an Event of Default, and upon written notice to such Grantor of its intention to do so, to notify the obligors under any Receivables of the assignment of such Receivables to the Collateral Agent and to direct such obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent and, upon such notification and at the expense of such Grantor, to enforce collection of any such Receivables, to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done, and to otherwise exercise all rights with respect to such Receivables, including those set forth in Section 9-607 of the UCC. After receipt by any Grantor of the notice from the Collateral Agent referred to in the proviso to the preceding sentence, (i) all amounts and proceeds (including instruments) received by such Grantor in respect of the Receivables of such Grantor shall be received in trust for the benefit of the Secured Parties, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary indorsement) to be applied in accordance with Section 18(b) hereof and (ii) such Grantor will not adjust, settle or compromise the amount or payment of any Receivable, release wholly or partly any obligor thereof or allow any credit or discount thereon other than credits or discounts given in the ordinary course of business.

(c) Each Grantor acknowledges that it is not authorized to file any amendment or termination statement with respect to any financing statement naming the Collateral Agent as secured party without the prior written authorization of the Collateral Agent, subject to such Grantor's rights under the UCC.

Section 11. Voting Rights; Dividends; Etc.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Security Collateral of such Grantor or any part thereof for any purpose not inconsistent with the terms of this Agreement or the other Transaction Documents so long as such action does not materially impair (or have a materially adverse effect on) (A) the Collateral or (B) the Collateral Agent's security interest in such Collateral (except to the extent required by the Senior Agent).

(ii) Subject to Section 4 hereof, each Grantor shall be entitled to receive and retain any and all dividends, interest and other distributions paid in respect of the Security Collateral of such Grantor if and to the extent that the payment thereof is not otherwise prohibited by the terms of the Transaction Documents; provided that any and all dividends, interest and other distributions paid or payable in the form of instruments in respect of, or in exchange for, any Security Collateral, shall be promptly delivered to either the Senior Agent or the Collateral Agent to hold as Security Collateral (to the extent it is not Excluded Property) and shall, if received by such Grantor, be received in trust for the benefit of either the senior secured parties or the Secured Parties, be segregated from the other property or funds of such Grantor and be promptly delivered to either the Senior Agent or the Collateral Agent as Security Collateral in the same form as so received (with any necessary indorsement).

(iii) The Collateral Agent will execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request in writing for the purpose of enabling such Grantor to exercise the voting and other rights that it is entitled to exercise pursuant to paragraph (i) above and to receive the dividends or interest payments that it is authorized to receive and retain pursuant to paragraph (ii) above.

(b) Upon the occurrence and during the continuance of an Event of Default:

(i) All rights of each Grantor (A) to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 11(a)(i) shall automatically cease and (B) to receive the dividends, interest and other distributions that it would otherwise be authorized to receive and retain pursuant to Section 11(a)(ii) shall automatically cease, and, in each case, the Collateral Agent (personally or through an agent) shall thereupon be solely authorized and empowered (but not obligated) to (1) transfer and register in the Collateral Agent's name, or in the name of the Collateral Agent's nominee, the whole or any part of the Security Collateral, it being acknowledged by each Grantor (in its capacity as a Grantor and, if such Grantor is an issuer, in its capacity as an issuer) that such transfer and registration may be effected by the Collateral Agent by the delivery of a registration page to the applicable issuer, reflecting the Collateral Agent or its designee as the holder of such Security Collateral, or otherwise by the Collateral Agent through its irrevocable appointment as attorney-in-fact pursuant to the terms hereof, (2) exchange certificates or instruments evidencing or representing Security Collateral for certificates or instruments of smaller or larger denominations, (3) exercise the voting and all other rights in respect of the Security Collateral as a holder with respect thereto with or without actually becoming the holder thereof (including, without limitation, all economic rights, all control rights, authority and powers, and all status rights of such Grantor as a member, shareholder, or other owner of any applicable issuer) with full power of substitution to do so, (4) collect and receive all dividends and other payments and distributions made thereon, (5) notify the parties obligated on any of the Security Collateral to make payment to the Collateral Agent of any amounts due or to become due thereunder, (6) endorse instruments in the name of such Grantor to allow collection of any of the Security Collateral, (7) enforce collection of any of the Security Collateral by suit or otherwise, and surrender, release, or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any liabilities of any nature of any Person with respect thereto, (8) consummate any sales of Security Collateral or exercise other rights as set forth herein, (9) otherwise act with respect to the Security Collateral as though the Collateral Agent was the outright owner thereof, and/or (10) exercise any other rights or remedies the Collateral Agent may have under the UCC or other Applicable Law.

(ii) All dividends, interest and other distributions that are received by any Grantor contrary to the provisions of paragraph (i) of this Section 11(b) shall be received in trust for the benefit of the Secured Parties, shall be segregated from other funds of such Grantor and shall be promptly paid over to the Collateral Agent as Security Collateral in the same form as so received (with any necessary indorsement).

(iii) In order to permit the Collateral Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (A) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments in favor of the Collateral Agent as the Collateral Agent or the Holder may from time to time reasonably request and (B) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney and proxy set forth in Section 15 hereof.

Section 12. As to Letter-of-Credit Rights and Commercial Tort Claims.

(a) Upon the occurrence and during the continuance of an Event of Default, each Grantor will, promptly upon request by the Collateral Agent or the Holder, (i) notify (and such Grantor hereby authorizes the Collateral Agent to notify) the issuer and each nominated Person with respect to each of the Related Contracts consisting of letters of credit that the proceeds thereof have been assigned to the Collateral Agent hereunder and any payments due or to become due in respect thereof are to be made directly to the Collateral Agent or its designee and (ii) arrange for the Collateral Agent to become the transferee beneficiary of letters of credit.

(b) In the event that any Grantor hereafter acquires or has a commercial tort claim that has been filed with any court in an amount greater than \$250,000, it shall update Schedule XI to identify such new commercial tort claim and deliver it to the Collateral Agent in accordance with Section 6(c) hereof.

Section 13. Transfers. Each Grantor agrees that it will not (i) sell, transfer, assign or otherwise dispose of, or grant any option or license with respect to, any of the Collateral, other than sales, transfers, assignments and other dispositions of Collateral, and options or licenses relating to Collateral, entered into in the ordinary course of such Grantor's business, or as otherwise permitted under the terms of the First Lien Loan Documents (as defined in the Intercreditor Agreement).

Section 14. Collateral Agent Appointed Attorney-in-Fact. Each Grantor hereby irrevocably appoints the Collateral Agent (and all officers, employees or agents designated by the Collateral Agent) such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time, in the Collateral Agent's discretion, to take any action and to execute any instrument that the Collateral Agent or the Holder may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(b) to receive, indorse and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above;

(c) to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any assigned agreement or the rights of the Collateral Agent with respect to any of the Collateral;

(d) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including actions to pay or discharge taxes or Liens (other than Liens permitted under the terms of the First Lien Loan Documents (as defined in the Intercreditor Agreement)) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Collateral Agent or the Holder in its sole discretion, any such payments made by Collateral Agent to become obligations of such Grantor to Collateral Agent, due and payable immediately without demand;

(e) (i) to generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Collateral Agent were the absolute owner thereof for all purposes and (ii) to do, at Collateral Agent's or the Holder's option and such Grantor's expense, at any time or from time to time, all acts and things that Collateral Agent or the Holder deems reasonably necessary to protect, preserve or realize upon the Collateral and Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do;

(f) to repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to the Company or such other Grantor in respect of any account of the Company or such other Grantor;

(g) in the case of any Intellectual Property owned by or licensed to such Grantor, execute, deliver and have recorded any document that Collateral Agent or the Holder may request to evidence, effect, publicize or record Collateral Agent's security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(h) assign any Intellectual Property owned by such Grantor or any IP Licenses of such Grantor throughout the world on such terms and conditions and in such manner as Collateral Agent or the Holder shall in its sole discretion determine, including the execution and filing of any document necessary to effectuate or record such assignment; and

(i) to enter upon the premises of a Grantor or any location where any Collateral is located or kept (in the case of leased premises, only to the extent permitted by the contract, agreement or lease in respect of such premises), in each case without obtaining a final judgment or giving notice to such Grantor and without obligation to pay rent to such Grantor, to remove Collateral therefrom to the premises of the Collateral Agent or any representative of the Collateral Agent in order to effectively collect or liquidate the Collateral;

provided that the Collateral Agent shall have and may exercise rights under any of the foregoing clauses (a) through (i) or otherwise under the power of attorney granted under this Section 14 only upon the occurrence and during the continuance of any Event of Default and such power of attorney shall automatically terminate upon the termination of this Agreement, or with respect to any Grantor, upon the release of such Grantor by the Collateral Agent.

Section 15. Proxy.

(a) EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT FOR SUCH GRANTOR WITH RESPECT TO THE PLEDGED STOCK WITH THE RIGHT TO, AFTER THE OCCURRENCE AND DURING THE CONTINUANCE OF AN EVENT OF DEFAULT, TAKE ANY OF THE FOLLOWING ACTIONS: (I) TRANSFER AND REGISTER IN ITS NAME OR IN THE NAME OF ITS NOMINEE THE WHOLE OR ANY PART OF THE PLEDGED STOCK, (II) VOTE THE PLEDGED STOCK, WITH FULL POWER OF SUBSTITUTION TO DO SO, (III) RECEIVE AND COLLECT ANY DIVIDEND OR OTHER PAYMENT OR DISTRIBUTION IN RESPECT OF OR IN EXCHANGE FOR THE SECURITY COLLATERAL OR ANY PORTION THEREOF, TO GIVE FULL DISCHARGE FOR THE SAME AND TO INDORSE ANY INSTRUMENT MADE PAYABLE TO GRANTOR FOR THE SAME, (IV) EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED STOCK WOULD BE ENTITLED (INCLUDING, WITH RESPECT TO THE PLEDGED STOCK, GIVING OR WITHHOLDING WRITTEN CONSENTS OF MEMBERS, CALLING SPECIAL MEETINGS OF MEMBERS AND VOTING AT SUCH MEETINGS) AND (V) TAKE ANY ACTION AND TO EXECUTE ANY INSTRUMENT WHICH COLLATERAL AGENT MAY DEEM NECESSARY OR ADVISABLE TO ACCOMPLISH THE PURPOSES OF THIS AGREEMENT. THE APPOINTMENT OF COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE VALID AND IRREVOCABLE UNTIL THE OBLIGATIONS HAVE BEEN INDEFEASIBLY PAID (OR OTHERWISE SATISFIED) IN FULL IN ACCORDANCE WITH THE PROVISIONS OF THE NOTE AND THE OTHER TRANSACTION DOCUMENTS; IT BEING UNDERSTOOD THAT SUCH OBLIGATIONS WILL CONTINUE TO BE EFFECTIVE OR AUTOMATICALLY REINSTATED, AS THE CASE MAY BE, IF AT ANY TIME ANY PAYMENT, IN WHOLE OR IN PART, OF ANY OF THE OBLIGATIONS IS RESCINDED OR MUST OTHERWISE BE RESTORED OR RETURNED BY THE COLLATERAL AGENT, OR ANY SECURED PARTY FOR ANY REASON, INCLUDING AS A PREFERENCE, FRAUDULENT CONVEYANCE, OR OTHERWISE UNDER ANY BANKRUPTCY, INSOLVENCY, OR SIMILAR LAW, ALL AS THOUGH SUCH PAYMENT HAD NOT BEEN MADE; IT BEING FURTHER UNDERSTOOD THAT IN THE EVENT ANY PAYMENT OF ALL OR ANY PART OF THE OBLIGATIONS IS RESCINDED OR MUST BE RESTORED OR RETURNED, ALL REASONABLE OUT-OF-POCKET COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE AND DOCUMENTED (WITHOUT HAVING THE EFFECT OF WAIVING ANY ATTORNEY-CLIENT PRIVILEGE) OUTSIDE ATTORNEYS' FEES AND DISBURSEMENTS) INCURRED BY THE COLLATERAL AGENT IN DEFENDING AND ENFORCING SUCH REINSTATEMENT SHALL BE DEEMED TO BE INCLUDED AS A PART OF THE OBLIGATIONS. SUCH APPOINTMENT OF COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL BE VALID AND IRREVOCABLE AS PROVIDED HEREIN NOTWITHSTANDING ANY LIMITATIONS TO THE CONTRARY SET FORTH IN THE ORGANIZATIONAL DOCUMENTS OF ANY GRANTOR OR ANY ISSUER. In order to further affect the foregoing transfer of rights in favor of Collateral Agent, Collateral Agent shall have the right, upon the occurrence and during the continuance of an Event of Default, to present to any Grantor or any issuer an irrevocable proxy and/or registration page.

(b) The Collateral Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Security Collateral at any and all times after the occurrence and during the continuance of an Event of Default, including, but not limited to, at any meeting of shareholders, partners, or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by Applicable Law, the Collateral Agent shall have no agency, fiduciary, or other implied duties to any Grantor, any Guarantor, or any other Person when acting in its capacity as such proxy or attorney-in-fact. Each Grantor hereby waives and releases to the fullest extent permitted by Applicable Law any claims that it may otherwise have against the Collateral Agent with respect to any breach or alleged breach of any such agency, fiduciary, or other duty.

Section 16. Collateral Agent May Perform. Upon the occurrence and during the continuance of any Event of Default, if any Grantor fails to perform any agreement contained herein, the Collateral Agent may, but without any obligation to do so, upon prior notice to the Company, itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by such Grantor under Section 18 hereof.

Section 17. The Collateral Agent's Duties. Notwithstanding any other provision of this Agreement, nothing herein contained shall be construed as requiring or obligating the Collateral Agent to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by the Collateral Agent or any other Secured Party, or to present or file any claim or notice, or to take any action with respect to the Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken or omitted to be taken by the Collateral Agent with respect to the Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of any Grantor or to any claim or action against the Collateral Agent. The provisions of this Section 17 shall in no event relieve any Grantor of any of its obligations hereunder or under any other Transaction Document with respect to the Collateral or any part thereof or impose any obligation on the Collateral Agent to proceed in any particular manner with respect to the Collateral or any part thereof, or in any way limit the exercise by the Collateral Agent of any other or further right that it may have on the date of this Agreement or hereafter, whether hereunder, under any other Transaction Document, by law or otherwise. The powers conferred on the Collateral Agent hereunder are solely to protect the Secured Parties' interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and shall have no duty as to any Collateral as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. None of the Collateral Agent or any of its officers, directors, employees or agents shall be liable for any act or failure to act hereunder. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

Section 18. Remedies: Application of Proceeds.

(a) Remedies. If any Event of Default shall have occurred and be continuing:

(b) The Collateral Agent may (but shall not be obligated to), or shall at the written direction of the Holder, exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral) and/or: (i) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, make available all or part of the Collateral to the Collateral Agent at a place and time to be designated by the Collateral Agent that is reasonably convenient to both parties; (ii) subject to Applicable Law, without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Collateral Agent may deem commercially reasonable; (iii) occupy, on a non-exclusive basis, any premises owned or leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor in respect of such occupation (in the case of leased premises, only to the extent permitted by the contract, agreement or lease in respect of such premises); and (iv) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral, including any and all rights of such Grantor to (A) demand or otherwise require payment of any amount under, or performance of any provision of, the Receivables and the other Collateral, (B) withdraw, or cause or direct the withdrawal, of all funds with respect to the Account Collateral and (C) exercise all other rights and remedies with respect to the Receivables and the other Collateral, including those set forth in Section 9-607 of the UCC. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to such Grantor of the time and place of any public sale, or of the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that (x) the internet shall constitute a "place" for purposes of Section 9-610(b) of the UCC to the extent permitted under applicable Requirements of Law and (y) to the extent notification of sale shall be required by law, notification by mail of the URL where a sale will occur and the time when a sale will commence at least ten (10) days prior to the sale shall constitute a reasonable notification for purposes of Section 9-611(b) of the UCC.

(i) Any cash held by or on behalf of the Collateral Agent and all cash proceeds received by or on behalf of the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Collateral Agent, be held by the Collateral Agent as collateral for, and/or then or at any time thereafter shall be applied in whole or in part by the Collateral Agent for the benefit of the Secured Parties against, all or any part of the Obligations in accordance with Section 18(b) hereof.

(ii) All payments received by any Grantor under or in connection with any assigned agreement or otherwise in respect of the Collateral shall be received in trust for the benefit of the Collateral Agent, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Collateral Agent in the same form as so received (with any necessary indorsement).

(iii) In each case under this Agreement in which the Collateral Agent takes any action with respect to the Collateral, including proceeds thereof, the Collateral Agent shall provide to the Company such records and information regarding the possession, control, sale and any receipt of amounts with respect to such Collateral as may be reasonably requested in writing by the Company as a basis for the preparation of the company's financial statements in accordance with GAAP. Each Grantor shall, at the request of the Collateral Agent or the Holder, use commercially reasonable efforts to obtain all requisite consents or approvals by the licensor of each IP License to effect the assignment of all such Grantor's right, title and interest thereunder to the Collateral Agent (or its designee), for the ratable benefit of the Secured Parties.

(c) Application of Proceeds. In the event the Collateral Agent sells or otherwise disposes of the Collateral, or any part thereof in the course of exercising the remedies provided for in this Agreement, any amounts held, realized or received by the Collateral Agent pursuant to the provisions hereof, including the proceeds of the sale of any of the Collateral or any part thereof, shall be applied by the Collateral Agent as follows: *first*, toward the payment of any costs and expenses incurred by the Collateral Agent in enforcing this Agreement, in realizing on or protecting or preserving any Collateral and in enforcing or collecting any Obligations or any guaranty thereof, including, without limitation, the actual reasonable and documented (without having the effect of waiving any attorney-client privilege) outside attorneys' fees and expenses incurred by the Collateral Agent, all of which costs and expenses the Grantors agree to pay, *and then* to such other Obligations in such order as the Collateral Agent may elect. Any amounts and any Collateral remaining after such application and after indefeasible payment in full of all of the Obligations (including any reasonable amount determined by the Collateral Agent as appropriate to be held by the Collateral Agent to secure any indemnities or other contingent obligations), shall be paid or delivered to the Company, the other Grantors, the successor or permitted assigns of the Grantors, or as a court of competent jurisdiction may direct.

For the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 18 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral) after the occurrence and during the continuance of an Event of Default, each Grantor hereby grants to Collateral Agent, for the benefit of the Secured Parties, (i) an irrevocable, nonexclusive, worldwide license (exercisable without payment of royalty or other compensation to such Grantor), including in such license the right to sublicense, use and practice any Intellectual Property now owned or used by or hereafter acquired by such Grantor and access to all media in which any of the licensed items may be recorded or stored and to all software and programs used for the compilation or printout thereof and (ii) an irrevocable license (without payment of rent or other compensation to such Grantor) to use, operate and occupy all real property owned, operated, leased, subleased or otherwise occupied by such Grantor. Any license, sublicense or other transaction entered into by the Collateral Agent in accordance herewith shall be binding upon each Grantor notwithstanding any subsequent cure of an Event of Default.

Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any Security Collateral by reason of certain prohibitions contained in the Securities Act and applicable state or foreign securities laws or otherwise or may determine that a public sale is impracticable, not desirable or not commercially reasonable and, accordingly, may resort to one or more private sales thereof to a restricted group of purchasers that shall be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Collateral Agent shall be under no obligation to delay a sale of any Security Collateral for the period of time necessary to permit the issuer thereof to register such securities for public sale under the Securities Act or under applicable state securities laws even if such issuer would agree to do so.

Each Grantor agrees to use its reasonable best efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of any portion of the Security Collateral pursuant to this Section 18 valid and binding and in compliance with all applicable Requirements of Law. Each Grantor further agrees that a breach of any covenant contained herein will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained herein shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defense against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Note. Each Grantor waives any and all rights of contribution or subrogation upon the sale or disposition of all or any portion of the Collateral by Collateral Agent until termination of this Agreement in accordance with Section 23(b) hereof.

Section 19. Indemnity and Expenses.

(a) Notwithstanding any indemnification obligations under any other Transaction Document, each Grantor agrees to indemnify the Collateral Agent and each Secured Party and each of their respective Affiliates and their respective officers, agents, directors and employees (each, an “**Indemnified Party**”) for, and hold them harmless against, any and all loss, liability, claim, damage or expenses of any kind or nature (including fees and disbursements of counsel to the Collateral Agent and counsel to the Holder) (each instance, an “**Indemnified Matter**”), provided, however, that the Grantors shall not have any obligation under this Section 19(a) to any Indemnified Party with respect to any Indemnified Matter resulting from gross negligence or willful misconduct on the part of such Indemnified Party (as determined by the final non-appealable judgment or order of a court of competent jurisdiction).

(b) Each Grantor will pay or reimburse the Collateral Agent or the Holder upon the Collateral Agent’s or the Holder’s request for the amount of any and all reasonable and documented (without having the effect of waiving any attorney-client privilege) out-of-pocket expenses (including outside legal fees, disbursements and expenses or taxes), documented disbursements or advances reasonably incurred or made by the Collateral Agent or the Holder in connection with (i) the administration of, and any request for amendment, waiver or consent under, this Agreement or any other Transaction Document, (ii) the custody, preservation, use or operation of, or the sale of, collection from or other realization upon, any of the Collateral, (iii) the exercise, enforcement or protection of any of the rights of the Collateral Agent or the other Secured Parties hereunder or under any other Transaction Document or (iv) the failure by any Grantor to perform or observe any of the provisions hereof or of any other Transaction Document (including the reasonable and documented (without having the effect of waiving any attorney-client privilege) compensation, expenses and disbursements of its outside legal counsel and of all Persons not regularly in its employ).

(c) Any such amounts payable as provided hereunder shall constitute additional obligations of the Grantors hereunder and under the other Transaction Documents. The provisions of this Section 19 shall remain operative and in full force and effect regardless of the termination of this Agreement or any other Transaction Document, the consummation of the transactions contemplated hereby, the repayment of the Note, the invalidity or unenforceability of any term or provision of this Agreement or any other Transaction Document, or any investigation made by or on behalf of the Collateral Agent or any other Secured Party. All amounts due under this Section 19 shall be payable on request therefor. Each Grantor agrees that any indemnification or other protection provided to any Indemnified Party pursuant to this Agreement shall (i) survive payment in full of the Obligations of the Grantors hereunder and (ii) inure to the benefit of any Person who was at any time a Collateral Agent, Holder, Secured Party or Indemnified Party under this Agreement.

(d) Each Grantor agrees that neither the Collateral Agent nor any Indemnified Party or Secured Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Grantor or any of their respective Subsidiaries or any of their equity holders or creditors or in connection with the transactions contemplated hereby and/or in the other Transaction Documents except those caused by the gross negligence or willful misconduct of the Collateral Agent, an Indemnified Party or a Secured Party (as determined by the final non-appealable judgment or order of a court of competent jurisdiction). In no event, however, shall the Collateral Agent, any Secured Party or any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages and each Grantor hereby waives, releases and agrees (for itself and on behalf of its Subsidiaries) not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(e) The undertakings in this Section 19 shall survive termination of this Agreement, the payment of all Obligations and/or the resignation or removal of the Collateral Agent.

Section 20. Amendments; Waivers; Additional Grantors; Etc.

(a) No amendment or waiver of any provision of this Agreement, and no consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Collateral Agent and, with respect to any amendment, the Company on behalf of the Grantors, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Collateral Agent or any other Secured Party to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(b) Simultaneously with the acquisition or formation of each new Subsidiary, such Person shall become a Grantor for all purposes of this Agreement upon the execution and delivery by such Person of a security agreement supplement in substantially the form of Exhibit B hereto (each a “**Security Agreement Supplement**”) and execute and deliver all Security Documents and Guaranties as reasonably requested by the Collateral Agent. Such Person shall be referred to as an “**Additional Grantor**” and each reference in this Agreement and the other Transaction Documents to “Grantor” shall also mean and be a reference to such Additional Grantor, each reference in this Agreement and the other Transaction Documents to the “Collateral” shall also mean and be a reference to the Collateral granted by such Additional Grantor and each reference in this Agreement to a Schedule shall also mean and be a reference to the schedules attached to such Security Agreement Supplement.

(c) To the extent any Pledged Stock or Pledged Debt has not been delivered as of the Issuance Date, such Grantor shall deliver a pledge amendment duly executed by the Grantor in substantially the form of Exhibit C hereto. Such Grantor authorizes Collateral Agent to attach each Pledge Amendment to this Agreement.

Section 21. Notices: References.

(a) Any notice, request or other communication required or permitted hereunder shall be given in writing (which may be by PDF attachment sent via email) to each of the other parties thereto entitled at the following notice locations (or at such other notice location as such party may designate by five (5) calendar days' advance written notice similarly given to each of the other parties hereto):

If to Company or any Grantor:

Workhorse Group Inc.
Attn: Chief Financial Officer
3600 Park 42 Drive, Suite 160E
Sharonville, Ohio 45241
Email: bob.ginnan@workhorse.com

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

Taft Stettinius & Hollister LLP
Attn: Arthur McMahon, III
425 Walnut Street, Suite 1800
Cincinnati, Ohio 45202
Email: amcmahon@taftlaw.com

If to Collateral Agent:

Motive GM Holdings II LLC
[Omitted.]

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

DLA Piper LLP (US)
Attention: Kira Mineroff
51 John F. Kennedy Parkway
Suite 120
Short Hills, NJ 07078-2704
Email: kira.mineroff@us.dlapiper.com

DLA Piper LLP (US)
Attention: Brent L. Bernell
DLA Piper LLP (US)
303 Colorado Street
Suite 3000
Austin, TX 78701-4653
Email: brent.bernell@us.dlapiper.com

Section 22. Continuing Security Interest: Assignments Under the Note. This Agreement shall create a continuing security interest in the Collateral and shall (a) continue in effect until terminated in accordance with Section 23(b), (b) be binding upon each Grantor, its successors and assigns and (c) inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Secured Parties and their respective successors, permitted transferees and permitted assigns. Without limiting the generality of the foregoing clause (c), to the extent permitted under the Note, the Holder may assign or otherwise transfer all or any portion of its rights and obligations under the Note to any permitted transferee, and such permitted transferee shall thereupon become vested with all the benefits in respect thereof granted to the Holder herein or otherwise.

Section 23. Release: Termination.

(a) Upon any disposition of any item of Collateral by any Grantor that is not otherwise prohibited under the Note, the security interests granted under this Agreement by such Grantor in such Collateral shall terminate and be released. The Collateral Agent will at the Grantor's request and expense deliver to such Grantor all notes and other instruments representing any Pledged Debt, Receivables or other Collateral so released, and Collateral Agent will, at such Grantor's expense, promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request in writing to evidence the release of such item of Collateral from the assignment and security interest granted hereby.

(b) Upon the earlier of (i) the payment in full of all of the Obligations (other than any contingent indemnification obligations not then due and payable) and (ii) the satisfaction and discharge of the Note, in each case, in accordance with their terms, this Agreement and all obligations (other than those expressly stated to survive such termination) of the Collateral Agent and each Grantor hereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any party, and all rights to Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Collateral Agent shall promptly deliver to such Grantor any Collateral held by the Collateral Agent hereunder, and promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request in writing to evidence such termination.

Section 24. Execution in Counterparts: Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. The delivery of a copy of an executed counterpart of a signature page to this Agreement by telecopier, pdf, or other electronic means (including by email) shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 25. Conflicts. In the event of any conflict or inconsistency between any of the provisions of this Agreement and any of the provisions of the Note, the provisions of the Note shall prevail and control.

Section 26. Governing Law. THIS AGREEMENT, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

Section 27. Jurisdiction: Waiver of Jury Trial.

(a) Each Grantor irrevocably consents and agrees, for the benefit of the Holder from time to time of the Note and the Collateral Agent, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Agreement may be brought in any state or federal court sitting in Wilmington, Delaware and, until amounts due and to become due in respect of the Note have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

(b) Each Grantor irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Agreement brought in any state or federal court sitting in Wilmington, Delaware and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum and hereby irrevocably designates and appoints James D. Harrington located at 3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241, as its authorized agent for receipt of service of process in any such suit, action or proceeding. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

EACH OF THE GRANTORS AND THE COLLATERAL AGENT 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 28. Reinstatement. Each Grantor agrees that, if any payment made by the Company, any Grantor, any guarantor or other Person and applied to the Obligations is at any time annulled, avoided, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or the proceeds of any Collateral are required to be returned by any Secured Party to the Company, such Grantor, such guarantor, its estate, trustee, receiver or any other Person under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or repayment, any Lien or other Collateral securing such liability shall be and remain in full force and effect, as fully as if such payment had never been made. If, prior to any of the foregoing, (a) any Lien or other Collateral securing such Grantor's liability hereunder shall have been released or terminated by virtue of the foregoing or (b) any provision of the Guaranties shall have been terminated, cancelled or surrendered, such Lien, other Collateral or provision shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of any such Grantor in respect of any Lien or other Collateral securing such obligation or the amount of such payment.

Section 29. Severability. In case any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 30. Intercreditor Agreement. Notwithstanding anything herein to the contrary, (i) the Liens and security interests granted to the Collateral Agent pursuant to this Agreement are expressly subject and subordinate to the Liens and security interests granted in favor of the Senior Agent, and (ii) the exercise of any right or remedy by the Collateral Agent hereunder, is subject to the limitations and provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of the Intercreditor Agreement shall govern and control. Without limiting the foregoing, prior to the First Lien Obligations having been Paid In Full (as defined in the Intercreditor Agreement), the delivery of any Pledged Stock, Pledged Debt, any other Collateral, proxy, power, assignment, document or other instrument to the Senior Agent shall satisfy any obligation of any Grantor under this Agreement to deliver any such Pledged Stock, Pledged Debt, other Collateral, proxy, power, assignment, document or other instrument to the Collateral Agent.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

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

WORKHORSE GROUP INC., as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

WORKHORSE TECHNOLOGIES INC., as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

WORKHORSE MOTOR WORKS INC, as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

WORKHORSE PROPERTIES INC., as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

HORSEFLY INC., as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

STABLES & STALLS LLC, as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

[Signature Page to Security Agreement]

STABLES & STALLS REAL ESTATE I LLC, as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

ROUTEHORSE LLC, as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

ESG LOGISTICS CORP., as a Grantor

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA MERGER SUBSIDIARY, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA INTERMEDIATE, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

OMAHA INTERMEDIATE 2, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

Motive GM Holdings II LLC, solely in its capacity as
Collateral Agent

By: /s/ [Omitted.]
Name: [Omitted.]
Title: Manager

[Signature Page to Security Agreement]

Exhibit A

Form of Intellectual Property Security Agreement

[Omitted.]

Exhibit A-1

Exhibit B

Form of Security Agreement Supplement

[Omitted.]

Exhibit B-1

Exhibit C

Form of Pledged Agreement

[Omitted.]

Exhibit C-1

Attachment I

Certain Definitions

The following terms shall have the following meanings:

“Applicable Law” means, as to any Person, all statutes, rules, regulations, orders or other requirements having the force of law and applicable to such Person, and all court orders and injunctions, and/or similar rulings and applicable to such Person, in each case of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person.

“Approved Control Agreement” means any control agreements with the Collateral Agent (i) substantially in the form of any control agreement in favor of the Senior Agent in existence as of the Issuance Date or (ii) in such other form and substance reasonably satisfactory to the Collateral Agent as to its rights, duties and obligations; provided, that, such control agreements may be four-party control agreements with the Senior Agent as the controlling secured party until the [Discharge of the Senior Obligations] (as defined in the Intercreditor Agreement).

“Copyrights” means all copyrights and copyright registrations (whether registered or unregistered and whether published or unpublished), including, without limitation, the copyright registrations and recordings thereof and applications in connection therewith listed on Schedule VI and all copyrights in computer software, internet web sites and the content, and (i) all reissues, continuations, extensions or renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations, violations or dilutions thereof, (iii) the right to sue for past, present, and future infringements, misappropriations or violations thereof, (iv) the goodwill of each Grantor’s business symbolized by the foregoing and connected therewith, and (v) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“Equity Interests” shall mean, with respect to any Person, any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act), including in each case all of the following rights relating to such Equity Interests, whether arising under the Organizational Documents of the Person issuing such Equity Interests (the “issuer”) or under the Applicable Laws of such issuer’s jurisdiction of organization relating to the formation, existence and governance of corporations, limited liability companies or partnerships or business trusts or other legal entities, as the case may be: (i) all economic rights (including all rights to receive dividends and distributions) relating to such Equity Interests; (ii) all voting rights and rights to consent to any particular action(s) by the applicable issuer; (iii) all management rights with respect to such issuer; (iv) in the case of any Equity Interests consisting of a general partner interest in a partnership, all powers and rights as a general partner with respect to the management, operations and control of the business and affairs of the applicable issuer; (v) in the case of any Equity Interests consisting of the membership/limited liability company interests of a managing member in a limited liability company, all powers and rights as a managing member with respect to the management, operations and control of the business and affairs of the applicable issuer; (vi) all rights to designate or appoint or vote for or remove any officers, directors, manager(s), general partner(s) or managing member(s) of such issuer and/or any members of any board of members/managers/partners/directors that may at any time have any rights to manage and direct the business and affairs of the applicable issuer under its Organizational Documents as in effect from time to time or under Applicable Law; (vii) all rights to amend the Organizational Documents of such issuer, (viii) in the case of any Equity Interests in a partnership or limited liability company, the status of the holder of such Equity Interests as a “partner”, general or limited, or “member” (as applicable) under the applicable Organizational Documents and/or Applicable Law; and (ix) all certificates evidencing such Equity Interests.

“Event of Default” means any “Event of Default” as such term is defined in the Note.

“Excluded Account” means (a) a zero balance account that sweeps on a daily basis into a deposit account subject to an enforceable security interest in favor of the Collateral Agent (including for accounts in the United States subject to a control agreement), (b) accounts used exclusively for payroll, the withheld employee portion of payroll taxes or other employee wage and benefit payments, (c) accounts holding pledges and deposits for workers’ compensation or unemployment insurance, (d) accounts which hold funds or security entitlements (as defined in the UCC), as applicable, which any Grantor holds in trust or as an escrow or fiduciary for another Person that is not the Company or any other Subsidiary of the Company, and (f) any other deposit account or securities account so long as the balance on deposit in such account does not exceed \$10,000 individually and \$100,000 in the aggregate for all such accounts, in each case, during any calendar month.

“Excluded Equity” means any Equity Interests issued to any Grantor by any Subsidiary of such Grantor that is not Subsidiary Equity.

“Excluded Property” means (1) any property to the extent that such grant of a security interest (x) is prohibited by any applicable Requirement of Law, (y) requires a consent not obtained of any governmental authority pursuant to such applicable Requirement of Law or (z) is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document providing for such prohibition, breach, default or termination or requiring such consent is ineffective under the anti-assignment provisions of the UCC or other applicable law; provided that no property shall be excluded by this subclause (z) to the extent such exclusion arises from a contract, agreement or document or any provision thereof that was entered into in contemplation hereof or for the purpose of circumventing the requirements of the Transaction Documents (it being understood that Excluded Property shall not include proceeds and Receivables in respect of the foregoing to the extent such proceeds and Receivables do not themselves constitute Excluded Property), (2) any lease, license or other agreement or any property that is subject to a purchase money Lien or capital lease or similar arrangement (for so long as subject to such purchase money Lien, capital lease or similar arrangement), in each case to the extent that a grant of a Lien therein would violate or invalidate such lease, license or agreement or such purchase money, capital lease or similar arrangement or create a right of termination in favor of any party thereto (other than any Grantor), except to the extent that such lease, license or other agreement or other document providing for such violation or invalidation or termination right is ineffective under the anti-assignment provisions of the UCC or other Applicable Law (it being understood that Excluded Property shall not include proceeds and Receivables in respect of the foregoing), (3) intent-to-use Trademarks, (4) Excluded Equity, (5) motor vehicles and other assets (other than motor vehicles or other assets constituting Inventory of any Grantor) subject to a certificate of title with a value not greater than \$250,000 in the aggregate at any time, (6) any fee-owned real property, and (7) those assets as to which Collateral Agent and the Grantors reasonably agree in writing that the cost of obtaining a security interest therein, or perfection thereof, are excessive in relation to the benefit to the Holder of the security to be afforded thereby.

“Foreign Subsidiary” shall mean any Subsidiary of any Person that is not organized or incorporated in the United States, any State or territory thereof or the District of Columbia.

“Government Contract” means any contract or subcontract to which a Grantor is a party and a counterparty is the United States Federal Government or any state or political subdivision thereof, or any department, agency, authority, board or instrumentality thereof and such contract involves in part the performance of services or the delivery of goods by or on behalf of such Grantor.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or other, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Intellectual Property” means all intellectual property rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws, including:

(a) all Patents;

(b) all Trademarks;

(c) all Copyrights;

(d) all agreements, permits, consents, orders, and IP Licenses relating to the license, development, use or disclosure of any of the foregoing to which any Grantor, now or hereafter, is a party or a beneficiary;

(e) all IP Ancillary Rights related thereto; and

(f) all Trade Secrets.

“IP Ancillary Rights” means, with respect to any Intellectual Property, as applicable, (i) all foreign counterparts to, and all divisionals, reversions, continuations, continuations-in-part, reissues, reexaminations, renewals and extensions of, such Intellectual Property, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect to such Intellectual Property, including payments under all IP Licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations, violations and/or dilutions thereof, (iii) all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, violation, dilution or other impairment thereof, and, in each case, all rights to obtain any other IP Ancillary Right, and (iv) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“IP Licenses” means all contractual obligations (and all related IP Ancillary Rights), whether written or oral, granting any right, title and interest in or relating to any Intellectual Property.

“IT Assets” means all information technology and computer systems relating to the transmission, storage, maintenance, organization, presentation, generation, processing or analysis of data and information whether or not in electronic format, used in or necessary for the conduct of any Grantor’s business.

“Material Adverse Effect” means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, prospects, or properties of any Grantor, (b) the rights and remedies of the Collateral Agent or the Holder under this Agreement or the Note or (c) the ability of any Grantor to perform its obligations under this Agreement, the Note or any other Transaction Document.

“Material IP” means Intellectual Property that individually or in the aggregate is material to the business of any Grantor, including but not limited to all Intellectual Property that is relevant to any of the products or services of any Grantor or the conduct or operation of their respective businesses (including the generation of future revenues).

“Material IP Agreements” means all material agreements (including IP Licenses) relating to Intellectual Property of any Grantor or of any third party that is used by any Grantor in its business.

“Organizational Documents” shall mean, with respect to any Person, any charter, articles or certificate of incorporation, certificate of organization, registration or formation, certificate of partnership or limited partnership, bylaws, operating agreement, limited liability company agreement, or partnership agreement of such Person and any and all other applicable documents relating to such Person’s formation, organization or entity governance matters (including any shareholders’ or equity holders’ agreement or voting trust agreement) and specifically includes, without limitation, any certificates of designation for preferred stock or other forms of preferred equity.

“Patents” means all patents and patent applications, including, without limitation, the patents and patent applications listed on Schedule V, and (i) all continuations, divisionals, continuations-in-part, reissues, extensions, renewals and reexaminations thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations, violations or dilutions thereof, (iii) the right to sue for past, present and future infringements, misappropriations or violations thereof, and (iv) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“Requirements of Law” means, as to any Person, the Organizational Documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Secured Parties” means any of the Collateral Agent and the Holder, as well as any other holder of Obligations.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations thereunder as the same shall be in effect at the time.

“Subsidiary Equity” shall mean (a) with respect to the Equity Interests issued to any Grantor by any Subsidiary (other than a Foreign Subsidiary), 100% of such issued and outstanding Equity Interests, and (b) with respect to any Equity Interests issued to any Grantor by any Foreign Subsidiary (i) 100% of such issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956(c)(2)) and (ii) 66% (or such greater percentage that, due to a change in an Applicable Law after the date hereof, (x) could not reasonably be expected to cause the undistributed earnings of such Foreign Subsidiary as determined for United States federal income tax purposes to be treated as a deemed dividend to such Grantor and (y) could not reasonably be expected to cause any material adverse tax consequences) of such issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)).

“Trademarks” means all trademarks, trade names, registered trademarks, trademark applications, service marks, trade dress, logos, URLs and domain names and other source or business identifiers, registered service marks and service mark applications, including without limitation, the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule VII, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements, misappropriations, violations or dilutions thereof, (iii) the right to sue for past, present and future infringements, misappropriations, violations or dilutions thereof, (iv) the goodwill of each Grantor’s business symbolized by the foregoing and connected therewith, and (v) all of each Grantor’s rights corresponding to the foregoing throughout the world.

“Trade Secrets” means all of the following: (a) trade secrets and other proprietary or confidential business information, including inventions, invention disclosures, discoveries, know how, systems, processes, methods, business and marketing plans, customer and vendor lists, manufacturing and production processes and techniques, methods, techniques, formulae, technology, algorithms, source code, designs, distribution information, drawings, flow sheets, formulae, improvements, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, and all other intellectual, industrial and intangible property of any type, including industrial designs and mask works, (b) all income, royalties, damages and payments now or hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and other payments for past or future misappropriation or other violation, and (c) the right to sue for past, present and future misappropriation or other violation thereof.

The following terms have the meanings given to them in the UCC and terms used herein without definition that are defined in the UCC have the meanings given to them in the UCC (such meanings to be equally applicable to both the singular and plural forms of the terms defined): “account”, “account debtor”, “as-extracted collateral”, “certificated security”, “chattel paper”, “commercial tort claim”, “commodity contract”, “deposit account”, “electronic chattel paper”, “equipment”, “farm products”, “fixture”, “general intangible”, “goods”, “health-care-insurance receivable”, “instruments”, “inventory”, “investment property”, “letter-of-credit right”, “proceeds”, “record”, “securities account”, “security”, “supporting obligation” and “tangible chattel paper”.

Schedules

[Omitted.]

Schedules-1

SUBSIDIARY GUARANTEE

This SUBSIDIARY GUARANTEE (this “Guarantee”) is made as of August 15, 2025, by Workhorse Technologies Inc., an Ohio corporation (“WTI”), Workhorse Motor Works Inc, an Indiana corporation (“WMW”), Workhorse Properties Inc., an Ohio corporation (“WPI”), Horsefly Inc., a Nevada corporation (“Horsefly”), Stables & Stalls LLC, a Delaware limited liability company (“Stables”), Stables & Stalls Real Estate I LLC, a Delaware limited liability company (“Stables Real Estate”), RouteHorse LLC, a Delaware limited liability company (“RouteHorse”) and ESG Logistics Corp., an Ohio corporation (“ESG”), Omaha Merger Subsidiary, Inc., a Delaware corporation (“Merger Sub”), Omaha Intermediate, Inc., a Delaware corporation (“OI”), and Omaha Intermediate 2, Inc., a Delaware corporation (“OI2”) and together with WTI, WMW, WPI, Horsefly, Stables, Stables Real Estate, RouteHorse, Merger Sub, OI and any other entity that may become a party hereto as provided herein, collectively, the “Guarantors”, and each, a “Guarantor”), in favor of the Holder (as defined below) of the Note (as defined below) and the Agent (as defined below) (including their respective successors, transferees and assigns, collectively, “Creditors”, each individually, a “Creditor”).

RECITALS:

WHEREAS, Workhorse Group Inc., a Nevada corporation (the “Company”) has agreed to issue to Motive GM Holdings II LLC (the “Holder”) a certain subordinated secured convertible note in an aggregate original principal amount of \$5,000,000, dated as of even date herewith (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Note”); all capitalized terms used and not defined in this Guarantee shall have the meaning given to such terms in the Note;

WHEREAS, pursuant to the Note, the Company and the Guarantors have entered into certain other Transaction Documents;

WHEREAS, in connection with the Note and the transactions contemplated thereby, the Company and each Guarantor have granted a second priority perfected security interest in all of their existing and future assets to Motive GM Holdings II LLC, in its capacity as collateral agent for the Holder (in such capacity, the “Agent”) for the benefit of the Secured Parties (as defined in the Security Agreement (defined below)) pursuant to that certain Security Agreement, dated as of even date herewith (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”) made by the Company and each Guarantor, as Grantors (as defined therein) to Agent for the benefit of the Secured Parties (as defined therein);

WHEREAS, each Guarantor will directly benefit from the sale of the Note to the Holder; and

WHEREAS, it is a condition to the obligations of the Holder under the Note that this Guarantee be duly executed and delivered.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to the Creditors to purchase the Note from the Company, the Guarantors hereby guarantee to the Creditors the prompt and full payment and performance of the Guaranteed Obligations of the Company (defined below), this Guarantee being upon the following terms and conditions:

1. Guaranteed Obligations of the Company. Each Guarantor hereby agrees that it is jointly and severally liable for, as primary obligor and not merely as surety, and absolutely and unconditionally and irrevocably guarantees to the Creditors, the punctual payment when due, and not merely the collectability thereof, whether by lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, of the Guaranteed Obligations of the Company. As used herein, the term “Guaranteed Obligations of the Company” means all debts, obligations or liabilities now or hereafter existing, other than contingent indemnification obligations, of the Company owed to the Creditors under the Note and the other Transaction Documents (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Company, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding).

2. Certain Agreements and Waivers by Guarantors.

(a) Notwithstanding anything in the Note to the contrary, the Guarantors hereby agree that “Events of Default” hereunder shall mean any Event of Default (as defined in the Note).

(b) Upon the occurrence of any Event of Default hereunder, the Guaranteed Obligations of the Company, for purposes of this Guarantee, shall be deemed immediately due and payable (x) with respect to any Bankruptcy Event of Default (as defined in the Note), automatically, and (y) with respect to any other Event of Default, at the election of the Agent or the Holder. Guarantors shall, on demand, pay the Guaranteed Obligations of the Company to the Creditors. It shall not be necessary for Agent, in order to enforce such payment, first to (i) institute suit or pursue or exhaust any rights or remedies against Company or others liable for the Obligations (as defined below) pursuant to the Transaction Documents (together with all interest accrued and unpaid thereon and all other sums due to Creditors in respect of such Obligations, the “Debt”), (ii) enforce any rights against any security that shall ever have been given to secure the Debt, (iii) join Company or any others liable for the payment or performance of the Guaranteed Obligations of the Company or any part thereof in any action to enforce this Guarantee and/or (iv) resort to any other means of obtaining payment or performance of the Guaranteed Obligations of the Company. As used herein, the term “Obligations” shall mean all of the obligations (including, without limitation, Obligations (as defined in the Security Agreement) of each of the Company, the Guarantors and each of their subsidiaries that is or may become a party to any Transaction Document, now or hereafter existing under the Transaction Documents (whether for principal, interest, fees, expenses, indemnification or otherwise)).

(c) In the event any payment by Company or any other Person to any Creditor is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason any Creditor is required to refund such payment or pay the amount thereof to any other party, such payment by Company or any other party to any such Creditor, as applicable, shall not constitute a release of Guarantors from any liability hereunder and this Guarantee shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Creditors of this Guarantee or of Guarantors), as the case may be, with respect to, and this Guarantee shall apply to, any and all amounts so refunded by such Creditor, as applicable, or paid by Creditor, as applicable, to another Person (which amounts shall constitute part of the Guaranteed Obligations of the Company), and any interest paid by any Creditor and any attorneys’ fees, costs and expenses paid or incurred by any Creditor in connection with any such event. If acceleration of the time for payment of any amount payable by Company under any Transaction Document is stayed or delayed by any law or tribunal, any amounts due and payable hereunder shall nonetheless be payable by Guarantors on demand by the Creditors.

3. Subordination. If, for any reason whatsoever, the Company is now or hereafter becomes indebted to any Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of the Company securing same shall, at all times, be subordinate in all respects to the Guaranteed Obligations of the Company and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations of the Company; and

(b) upon the occurrence and during the continuance of any Event of Default, such Guarantor shall not be permitted to enforce or receive payment, directly or indirectly, of any such indebtedness of the Company to such Guarantor until the Guaranteed Obligations of the Company have been fully and finally paid and performed.

4. Other Liability of Guarantors or Company. If any Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Company to Creditors other than under this Guarantee, such liability shall not be in any manner impaired or affected hereby, and the rights of Creditors hereunder shall be cumulative of any and all other rights that Creditors may have against such Guarantor.

5. Assignment. This Guarantee is for the benefit of Creditors and their respective successors and assigns, and in the event of an assignment of the Guaranteed Obligations of the Company, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations of the Company so assigned, may be transferred with such Guaranteed Obligations of the Company. Each Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations of the Company, or any part thereof, and agrees that failure to give notice will not affect the liabilities of such Guarantor hereunder.

6. Binding Effect. This Guarantee is binding not only on Guarantors, but also on each of the Guarantors' respective successors and assigns. Without limitation of any other term, provision or waiver contained herein, each Guarantor hereby acknowledges and agrees that it has been furnished true, complete and correct copies of the Transaction Documents and has reviewed the terms and provisions thereof (including, without limitation, the Guaranteed Obligations of the Company).

7. Nature of Guarantee. Each Guarantor hereby acknowledges and agrees that (a) this Guarantee is a guaranty of payment and not only of collection and that each Guarantor is liable hereunder as a primary obligor and not merely as surety, (b) this Guarantee shall only be deemed discharged after the payment in full of the Guaranteed Obligations of the Company, (c) this Guarantee shall not be reduced, released, discharged, satisfied or otherwise impacted in connection with (i) any act or occurrence that might, but for the provisions hereof, be deemed a legal or equitable reduction, satisfaction, discharge or release and/or (ii) Creditors' enforcement of remedies under the Transaction Documents, (d) this Guarantee shall survive the foregoing and shall not merge with any resulting foreclosure deed, deed in lieu or similar instrument (if any) and (e) the Guaranteed Obligations of the Company may be increased, extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee hereunder notwithstanding any such increase, extension or renewal.

8. Governing Law. This Guarantee shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts made and to be performed entirely within such state without regards to the conflicts of laws principles thereof other than mandatory provisions of law.

9. Invalidity of Certain Provisions. If any provision of this Guarantee or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guarantee nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guarantee, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable legal requirements.

10. Attorneys' Fees, Costs and Expenses of Collection. Each Guarantor shall pay on demand all attorneys' fees, costs and expenses and all other costs and expenses incurred by Creditors in the enforcement of or preservation of Creditors' rights under this Guarantee including, without limitation, all court costs, whether or not suit is filed herein, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guarantee against any other Guarantor, if there be more than one. Each Guarantor's obligations and liabilities under this Section 10 shall survive any payment or discharge in full of the Guaranteed Obligations of the Company.

11. Payments. All sums payable under this Guarantee shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

12. Controlling Agreement. It is not the intention of Creditors or Guarantors to obligate Guarantors to pay interest in excess of that lawfully permitted to be paid by Guarantors under applicable legal requirements. Should it be determined that any portion of the Guaranteed Obligations of the Company or any other amount payable by any Guarantor under this Guarantee constitutes interest in excess of the maximum amount of interest that such Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable legal requirements, the obligation of such Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable legal requirements.

13. Notices. All notices, communications or deliveries provided for hereunder must be in writing and will be deemed to have been duly given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via email prior to 5:30 p.m. (New York City time) on any Business Day; (b) the next Business Day after the date of transmission, if such notice or communication is delivered via email on a day that is not a Business Day or later than 5:30 p.m. (New York City time) on any Business Day; (c) the second Business Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given, addressed as follows:

if to any Guarantor:	at the applicable address set forth on <u>Schedule 1</u> hereto
with a copy to:	Workhorse Group Inc. 3600 Park 42 Drive, Suite 160E Sharonville, Ohio 45241 Attention: Robert Ginnan, Chief Financial Officer Email: bob.ginnan@workhorse.com
if to Agent:	as set forth in the Security Agreement
if to the Holder:	as set forth in the Note

or as to the Guarantors or the Creditors, at such other address as shall be designated by such party in a written notice to the other parties delivered in accordance with this Section 13.

14. Cumulative Rights. The exercise by Creditors of any right or remedy hereunder or under any other Transaction Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Creditors shall have all rights, remedies and recourses afforded to Creditors by reason of this Guarantee or any other Transaction Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against each Guarantor or others obligated for the Guaranteed Obligations of the Company, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole discretion of Creditors, as applicable, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantors that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of any Guarantor or of any breach of any of the provisions of this Guarantee or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Creditors shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on any Guarantor in any case shall of itself entitle any Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guarantee or any right, remedy or recourse of Creditors with respect hereto, or any default or breach, can be waived, nor can this Guarantee or any Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guarantee) executed, and delivered to Guarantors, by Creditors.

15. Subrogation. Notwithstanding anything to the contrary contained herein, (a) Guarantors shall not have any right of subrogation in or under any of the Transaction Documents or to participate in any way therein, or in any right, title or interest in and to any security or right of recourse for the Guaranteed Obligations of the Company, until the Guaranteed Obligations of the Company have been fully and finally paid, and (b) if any Guarantor is or becomes an “insider” (as defined in Section 101 of the Bankruptcy Code) with respect to the Company, then such Guarantor hereby irrevocably and absolutely waives any and all rights of contribution, indemnification, reimbursement or any similar rights against the Company with respect to this Guarantee (including any right of subrogation, except to the extent of collateral held by Agent), whether such rights arise under an express or implied contract or by operation of law. It is the intention of the parties that neither Guarantor shall be deemed to be a “creditor” (as defined in Section 101 of the Bankruptcy Code) of the Company by reason of the existence of this Guarantee in the event that the Company or any Guarantor becomes a debtor in any proceeding under the Bankruptcy Code. This waiver is given to induce Creditors to purchase the Note.

16. Further Assurances. Each Guarantor at such Guarantor’s expense will promptly execute and deliver to any Creditor upon such Creditor’s reasonable request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of such Guarantor under this Guarantee.

17. No Fiduciary Relationship. The relationship between Creditors, respectively, and Guarantors, is solely that of lender and guarantor. No Creditor has a fiduciary or other special relationship with or duty to Guarantors and none are created hereby or may be inferred from any course of dealing or act or omission of any Creditor.

18. Interpretation. If this Guarantee is signed by more than one Person as “Guarantor”, then the term “Guarantor” as used in this Guarantee shall refer to all such Persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guarantee are made by and shall be binding upon each and every such undersigned Person, jointly and severally and Creditors may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Note, the Security Agreement or any other Transaction Document.

19. Time of Essence. Time shall be of the essence in this Guarantee with respect to all of the Guarantors’ obligations hereunder.

20. Execution. This Guarantee may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which together shall constitute one and the same agreement. The delivery of a copy of an executed counterpart of a signature page to this Guarantee by telecopier, pdf, or other electronic means (including by email) shall be effective as delivery of a manually executed counterpart of this Guarantee.

21. Entire Agreement. This Guarantee embodies the entire agreement between Creditors, respectively, and Guarantors with respect to the guaranty by Guarantors of the Guaranteed Obligations of the Company. This Guarantee supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations of the Company. No condition or conditions precedent to the effectiveness of this Guarantee exist. This Guarantee shall be effective upon execution by Guarantor and delivery to Creditors. This Guarantee may not be modified, amended or superseded except in a writing signed by the Creditors and Guarantors referencing this Guarantee by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. The Transaction Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

22. WAIVER OF JURY TRIAL. EACH GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH ANY GUARANTOR AND CREDITORS MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS GUARANTEE AND ANY OTHER TRANSACTION DOCUMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTEE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY EACH GUARANTOR, AND EACH GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. EACH GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTEE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

23. Consent to Jurisdiction. Each Guarantor irrevocably submits generally and unconditionally for itself and in respect of its property to the nonexclusive jurisdiction of the federal and state courts located in Wilmington, Delaware over any suit, action or proceeding arising out of, or relating to, this Guarantee, and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. Each Guarantor irrevocably waives, to the fullest extent permitted by law, any objection that such Guarantor may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court, and any claims that any such suit, action or proceeding is brought in an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon each Guarantor and may be enforced in any court in which any Guarantor is subject to jurisdiction, by a suit upon such judgment provided that service of process is effected such Guarantor as provided in the Transaction Documents or as otherwise permitted by applicable legal requirements. Each Guarantor hereby releases, to the extent permitted by applicable legal requirements, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which such Guarantor may otherwise be entitled under the laws of the United States of America or of any state of possession of the United States of America now in force and which may hereinafter be enacted. The authority and power to appear for and enter judgment against any Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdiction as often as Creditors shall deem necessary and desirable, for all of which this Guarantee shall be sufficient warrant.

24. Waivers.

(a) Each Guarantor hereby agrees that no Creditor's rights or remedies nor any Guarantor's obligations under the terms of this Guarantee shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of each Guarantor under this Guarantee shall be absolute and unconditional irrespective of (and each Guarantor hereby waives any rights or protections related to):

(i) any limitation of liability or recourse in any other Transaction Document or arising under any law;

(ii) any claim or defense that this Guarantee was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations of the Company;

(iv) any homestead exemption or any other similar exemption under applicable legal requirements and each Guarantor hereby waives the benefit of any such exemption as to the Guaranteed Obligations of the Company;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations of the Company, including any impairment of any Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of any Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Creditors covering all or any part of the Guaranteed Obligations of the Company, any complete or partial release of any one or more of such Guarantors under any such other guaranty, or any complete or partial release or settlement of the Company or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations of the Company;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, amalgamation, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of the Company or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations of the Company;

(viii) either with or without notice to or consent of Guarantors: any renewal, extension, modification or rearrangement of the terms of any or all of the Guaranteed Obligations of the Company and/or any of the Transaction Documents;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Creditors to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations of the Company, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Transaction Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations of the Company;

(x) any failure of Creditors to notify Guarantors of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations of the Company or any part thereof, or of any Transaction Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Creditors against the Company or any security or other recourse, or of any new agreement between Creditors and the Company, it being understood that no Creditor shall be required to give Guarantors any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations of the Company, any and all rights to notice any Guarantor may have otherwise had being hereby waived by each Guarantor, and each Guarantor shall be responsible for obtaining for itself information regarding the Company, including, but not limited to, any changes in the business or financial condition of the Company, and each Guarantor acknowledges and agrees that no Creditors shall have any duty to notify any Guarantor of any information which Creditors may have concerning the Company;

(xi) if for any reason any Creditor is required to refund any payment by the Company to any other party liable for the payment or performance of any or all of the Guaranteed Obligations of the Company or pay the amount thereof to someone else;

(xii) the making of advances by any Creditor to protect its interest in the collateral under the Security Documents (the "Collateral"), preserve the value of the Collateral or for the purpose of performing any term or covenant contained in any of the Transaction Documents;

(xiii) the existence of any claim, counterclaim, set off, recoupment, reduction or defense based upon any claim or other right that any Guarantor may at any time have against the Company, Creditor, or any other Person, whether or not arising in connection with this Guarantee, the Note or any other Transaction Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations of the Company against the Company, whether because the Guaranteed Obligations of the Company exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations of the Company, or any part thereof, is ultra vires, or because the officers or Persons creating same acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Transaction Documents, or because the Company has any valid defense, claim or offset with respect thereto, or because the Company's obligations under the Transaction Documents cease to exist by operation of law, or because of any other reason or circumstance, it being agreed that each Guarantor shall remain liable hereon regardless of whether the Company or any other Person be found not liable on the Guaranteed Obligations of the Company, or any part thereof, for any reason (and regardless of any joinder of the Company or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations of the Company);

(xv) any order, ruling or plan of reorganization emanating from proceedings under any bankruptcy or similar insolvency laws with respect to the Company or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations of the Company, whether or not consented to by Creditors; and/or

(xvi) any partial or total transfer, pledge and/or reconstitution of the Company and/or any direct or indirect owner of the Company (regardless of whether the same is permitted under the Transaction Documents).

(b) This Guarantee shall be effective as a waiver of, and each Guarantor hereby expressly waives:

(i) any and all rights to which any Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Creditors to take prior recourse or proceedings against any collateral, security or Person whatsoever;

(ii) any other circumstance that may constitute a defense of the Company or any Guarantor hereunder and/or under the other Transaction Documents; and

(iii) any right and/or requirement of or related to notice, presentment, protest, notice of protest, further notice of nonpayment, notice of dishonor, default, nonperformance, intent to accelerate, acceleration, existence of the Obligations and/or any amendment or modification of the Obligations.

25. **Representations, Warranties and Covenants of Guarantors and the Company.** Each Guarantor hereby makes the following representations and warranties as of the date hereof or as of the date such Guarantor joins this Guarantee:

(a) **Organization and Qualification.** Such Guarantor is duly organized, validly existing and in good standing under the laws of the applicable jurisdiction set forth on Schedule 1 attached hereto, with the requisite corporate or other power and authority to own and use its properties and assets and to carry on its business as currently conducted. Such Guarantor is duly qualified to do business and is in good standing in each jurisdiction in which the nature of the business conducted or property owned by it makes such qualification necessary, except where the failure to be so qualified or in good standing, as the case may be, could not, individually or in the aggregate, (x) adversely affect the legality, validity or enforceability of any of this Guarantee in any material respect, (y) have a material adverse effect on the results of operations, assets, prospects, or financial condition of such Guarantor or (z) adversely impair in any material respect such Guarantor's ability to perform fully on a timely basis its obligations under this Guarantee.

(b) Authorization; Enforcement. Such Guarantor has the requisite corporate or other power and authority to enter into and to consummate the transactions contemplated by this Guarantee, and otherwise to carry out its obligations hereunder. The execution and delivery of this Guarantee by such Guarantor and the consummation by it of the transactions contemplated hereby have been duly authorized by all requisite corporate or other action on the part of such Guarantor. This Guarantee has been duly executed and delivered by such Guarantor and constitutes the valid and binding obligation of such Guarantor enforceable against such Guarantor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally the enforcement of, creditors' rights and remedies or by other equitable principles of general application.

(c) No Conflicts. There is no existing event of default, and no event has occurred which with the passage of time or the giving of notice or both will constitute an event of default, under any agreement to which such Guarantor is a party, the effect of which event of default will impair performance by such Guarantor of such Guarantor's obligations pursuant to and as contemplated by the terms of this Guarantee, and neither the execution and delivery of this Guarantee nor compliance with the terms and provisions hereof (i) will violate any presently existing provision of law or any presently existing regulation, order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, or (ii) will conflict or will be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of such Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which such Guarantor is a party or by which such Guarantor or any of such Guarantor's property may be subject, or in the event of any such conflict, the required consent or waiver of the other party or parties thereto has been validly granted, is in full force and effect, is valid and sufficient therefor and has been approved in writing by Creditors, in each case, other than any violation or conflict (except with respect to any Guarantor's Organizational Documents (as defined in the Security Agreement)) which would not reasonably be expected to result in a material adverse effect.

(d) Consents and Approvals. Such Guarantor is not required to obtain any consent, waiver, authorization or order of, or make any filing or registration with, any court or other federal, state, local, foreign or other governmental authority or other person in connection with the execution, delivery and performance by such Guarantor of this Guarantee.

(e) Action. There are no actions, suits or proceedings pending or threatened in writing against such Guarantor before any court or any governmental, administrative, regulatory, adjudicatory or arbitrational body or agency of any kind that will adversely affect performance by such Guarantor of such Guarantor's obligations pursuant to and as contemplated by the terms and provisions of this Guarantee.

(f) Note. The representations and warranties of the Company set forth in the Note as they relate to each Guarantor, each of which is hereby incorporated herein by reference, are true and correct as of each time such representations are deemed to be made pursuant to the Note, and the Holder shall be entitled to rely on each of them as if they were fully set forth herein, provided that each reference in each such representation and warranty to the Company's knowledge shall, for the purposes of this Section 25, be deemed to be a reference to such Guarantor's knowledge.

(g) Each of the representations and covenants of and/or relating to such Guarantor set forth in the other Transaction Documents are hereby re-made by such Guarantor and incorporated herein by reference as if fully set forth herein.

26. Additional Guarantors. The Company and each Guarantor shall cause each of its Subsidiaries formed or acquired on or subsequent to the date hereof to become a Guarantor for all purposes of this Guarantee by executing and delivering an Assumption Agreement in the form of Annex 1 hereto.

27. Creditors. Any reference to an action that may be taken or not taken by "Creditors" in this Agreement shall be deemed to be a reference to an action that may be taken or not taken by the Agent or the Holder, as applicable.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Guarantors have duly executed this Subsidiary Guarantee as of the date first written above.

GUARANTORS:

WORKHORSE TECHNOLOGIES INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

WORKHORSE MOTOR WORKS INC

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

WORKHORSE PROPERTIES INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

HORSEFLY INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

STABLES & STALLS LLC

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

STABLES & STALLS REAL ESTATE I LLC

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

ROUTEHORSE LLC

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Title: Chief Executive Officer

[Signature Page to Subsidiary Guarantee]

ESG LOGISTICS CORP.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Time: Chief Executive Officer

OMAHA MERGER SUBSIDIARY, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Time: Chief Executive Officer

OMAHA INTERMEDIATE, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Time: Chief Executive Officer

OMAHA INTERMEDIATE 2, INC.

By: /s/ Richard F. Dauch
Name: Richard F. Dauch
Time: Chief Executive Officer

[Signature Page to Subsidiary Guarantee]

Acknowledged and agreed:

COMPANY:

WORKHORSE GROUP INC.

By: /s/ Richard F. Dauch

Name: Richard F. Dauch

Title: Chief Executive Officer

Annex 1

Form of Assumption Agreement

[Omitted.]

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") made as of the 15th day of August, 2025 (the "Effective Date") between **WORKHORSE MOTOR WORKS INC.**, an Indiana corporation, having an address at c/o Workhorse Group Inc., 3600 Park 42 Drive, Suite 106E, Sharonville, Ohio 45241 ("Seller"), and **MANGO WORKHORSE, LLC**, a Florida limited liability company, having an address at 330 Hatch Drive, Foster City, California 94404 ("Purchaser").

WITNESSETH:

WHEREAS, Seller is the owner in fee (or is or will be the contract vendee, and at Closing (as hereinafter defined) will be the owner in fee) of those certain real parcels of land (and the improvements thereon), located in the City of Union City, County of Randolph and State of Indiana consisting of approximately 92.60 acres of land in the aggregate, and more particularly described on Exhibit "A-1" attached hereto and made a part hereof the "Land";

WHEREAS, as of the date hereof, the Land is improved with those certain building (or buildings) containing approximately 251,426 square feet in the aggregate (each, a "Building" and, collectively, the "Buildings") and the Improvements (as hereinafter defined; the Land and the Improvements (as hereinafter defined), together with the rights and interests described in Section 1.1 hereof, are hereinafter referred to collectively, as the "Real Property");

WHEREAS, Seller desires to sell and Purchaser desires to acquire the Property (as hereinafter defined), on the terms and provisions hereinafter set forth;

WHEREAS, at Closing (as hereinafter defined), Workhorse Group Inc., a Nevada corporation, an affiliate of Seller, as tenant ("Tenant"), desires to lease the Property from Purchaser pursuant to the terms of a lease, in the form of Exhibit "B-2" attached hereto and made a part hereof (the "Lease"); and

WHEREAS, concurrently with the Closing (as hereinafter defined), the parties (or their respective affiliates) will execute a merger agreement (the "Merger Agreement"), pursuant to which, Purchaser or its affiliate will, as of a date following the Closing Date hereunder set forth in the Merger Agreement and subject to all terms and conditions set forth in the Merger Agreement, merge with a subsidiary of Seller, and the Closing under this Agreement is conditioned on the simultaneous execution of the definitive Merger Agreement, as set forth below.

NOW, **THEREFORE**, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Agreement of Purchase and Sale. Seller hereby agrees to sell and convey and Purchaser agrees to purchase on such terms and conditions as are hereinafter set forth, all of the following:

1.1 Fee simple title in and to the Land, and all Buildings, improvements, structures, signage, sidewalks, landscaping, paving, parking facilities, fencing, signs and other amenities, fixtures and utility systems placed, constructed, situated, installed or located thereon (collectively and together with the Buildings, the “Improvements”), together with all of Seller’s right, title and interest (if any) in and to (a) all covenants, easements, rights-of-way, rights, privileges and other tenements, appurtenances and hereditaments appertaining thereto, (b) any strips or gores adjoining or adjacent to the Land or any portion thereof, (c) the streets, sidewalks, alleys, right of way and roads adjoining or adjacent to, or serving the Property, (d) any land lying in or under the bed of any creek, stream or waterway or any highway, avenue, road, easement, street, alley or right-of-way, open or proposed, public or private, in, on, in front of, abutting, adjoining or benefiting the Property to the center line thereof, (e) all air rights, development rights, mineral rights, water rights, water stock, sewer rights and irrigation rights, if any, running with, allocated to, or otherwise pertaining to the Land, (f) any award made or to be made or settlement in lieu thereof for the Property or any portion thereof by reason of condemnation, eminent domain or exercise of police power and any unpaid award for damage to the Land or any portion thereof by reason of change of grade or closing of any street, road or avenue, (g) all rights of ingress and egress to the Property, and (h) all other rights appurtenant to or connected with the beneficial use or enjoyment of the Property and the improvements located thereon;

1.2 All of Seller’s right, title and interest in and to all apparatus, fittings and fixtures in or on the Land or Improvements or which are affixed or attached thereto, including but not limited to the mechanical systems, electrical systems, plumbing systems and heating systems and air conditioning systems, used in connection with, or located in or on, the Land or Improvements (the “Fixtures”), provided that the Fixtures shall not include any fixtures (whether or not constituting real property under applicable law) or trade fixtures solely used in the production of vehicles conducted on the Property (including, without limitation, the cranes, jibs, frame stands, floor-mounted subframe fixtures, bridges, gantries and floor mounted lifts and any fixtures related thereto) (collectively, the “Workhorse Fixtures”), whether same are affixed to the Property or not;

1.3 All of Seller’s right, title and interest in and to any trademarks, copyrights, trade secrets, intellectual property and other intangible property relating solely to the Property (including, without limitation, the intangible property, if any, used solely in connection with the ownership, use, maintenance, or operation of the Property as real estate), but not to Seller or its affiliates (or to the operation of the business operated by Seller upon the Property) (the “Intangibles”);

1.4 All of Seller’s right, title and interest in and to all third party warranties and guaranties, if any, relating to the Property (collectively, the “Warranties”);

1.5 All of Seller’s right, title and interest in and to all consents, authorizations, rights, entitlements, development rights, variances or waivers, licenses, permits and approvals from any governmental, municipal or quasi-governmental agency, department, board, commission, bureau, authority or other entity or instrumentality (collectively, “Governmental Authority”) having jurisdiction over, or relating to, the Property (collectively, the “Approvals”), provided that Approvals shall not include any licenses, permits or approvals (“Operating Permits”) required solely for the business operated by Seller upon the Property;

1.6 All of Seller’s right, title and interest in and to all construction, operating and reciprocal easement agreements affecting the Property (the “REAs”), including, without limitation, any rights of Seller as a declarant, operator, approving party or like authority thereunder;

1.7 All of Seller's right, title and interest in and to all plans and specifications, as-built architectural drawings, other architectural and engineering drawings, prints, surveys, soil and substrata studies relating to the Property (the "Plans and Studies");

1.8 All of Seller's right, title and interest in and to any award or payment made or to be made in lieu of any of the foregoing or any portion thereof.

The Land, the Improvements, the Fixtures, the Intangibles, the Warranties, the Approvals, the REAs, and the Plans and Studies are herein collectively referred to as the "Property". Seller shall transfer to Purchaser all of Seller's interest of every kind or nature in the Land, the Improvements, the Fixtures, the Lease, the Intangibles, the Warranties, the Approvals, the REAs, the Plans and Studies, and all other interests of Seller in and to the Property.

Notwithstanding the foregoing, in no event shall the Property include the Workhorse Fixtures any fixtures (whether or not constituting real property under applicable law) or trade fixtures, furnishings furniture, or equipment located on the Property and used in the operation of the business operated upon the Property or the maintenance of the Property or any equipment or Improvements, including but not limited to office equipment and furniture, manufacturing equipment (including but not limited to equipment used in the production of vehicles conducted on the Property), tools and supplies, and maintenance equipment; any Operating Permits; or any of the Seller's right, title and interest in and to all assignable contracts and agreements relating to the repair, maintenance, management or operation of the Property or any equipment or Improvements.

Section 2. The Purchase Price.

2.1 The Purchase Price (the "Purchase Price") for the Property is Twenty Million and No/100 Dollars (\$20,000,000.00) to be paid at the Closing, plus or minus prorations and adjustments to be made pursuant to and in accordance with this Agreement, in good immediately available United States funds by wire transfer to First American Title Insurance Company, 1850 K St. NW, Ste. 1225, Washington, DC 20006, Attention: Josh Slan ("Escrow Agent" or "Title Company") on or before the Closing Date (as hereinafter defined) for disbursement in accordance with a mutually agreed closing statement.

2.1.1 Seller and Purchaser agree that no portion of the Purchase Price is or shall be allocated to personal property.

2.2 Purchaser acknowledges and agrees that its obligation to perform under this Agreement is not contingent upon Purchaser's ability to obtain any financing for the acquisition of the Property, provided, however, Seller shall cooperate (without cost to Seller) with any and all requests by Purchaser's equity and/or debt partners if applicable, with respect to the within transaction, provided that no such request shall delay the Closing or result in additional cost to Seller.

Section 3. Initial Property Information.

3.1 Prior to the Effective Date, Seller delivered to Purchaser or make available to Purchaser via electronic means or dropbox access, copies of the following: a recent title commitment issued to Seller with respect to the Property which excludes the RCU Transferred Parcel (as hereinafter defined) transferred by Seller and includes the RCU Swap Parcel (as hereinafter defined) received by Seller (the "Initial Commitment"), a recent ALTA survey of the Property (which does not currently exclude the 7.861 acre parcel (the "RCU Transferred Parcel") that had been recently conveyed and transferred by Seller to the Randolph County Community Economic Development Foundation, Inc. ("RCU"), nor does it include the approximately 12 acre parcel (the "RCU Swap Parcel") that was received by Seller from RCU in exchange therefor (the "Survey"), a recent Phase I Environmental Site Assessment of the Property (the "Phase I"), a recent property condition assessment of the Improvements (the "PCA"), a recent zoning report concerning the Property (the "Zoning Report"), and the other documents relating to or concerning the maintenance and operation of the Property listed on Schedule 1 (collectively, the "Initial Property Information"). Purchaser acknowledges that like the Survey, the Zoning Report included in the Initial Property Information does not currently include the RCU Swap Parcel. All due diligence costs including, without limitation, all costs of building and site inspections, any updates (including changing or adding certifications, if the applicable third party charges an additional fee therefor) to the Survey, the Phase I or the PCA, and any new engineering, environmental and/or other reports or inspections undertaken by Purchaser, shall be paid for by Purchaser.

3.2 Prior to the Effective Date, Seller has provided Purchaser and/or its designated agents or representatives access to the Property to conduct, at Purchaser's sole cost and expense, due diligence with respect to the Property. Purchaser (i) shall indemnify, defend and hold Seller and, as the case may be, its directors, members, managers, officers, employees and agents harmless from and against all Claims (as hereinafter defined) asserted against Seller and its directors, members, managers, officers, employees and agents (including, without limitation, any claims by invitees of the Property) arising from Purchaser's due diligence activities on or about the Property, excluding from the foregoing indemnity any Claims relating to latent defects or pre-existing conditions or issues, and/or matters merely discovered during Purchaser's due diligence activities, and/or the gross negligence or willful misconduct of Seller, or any of its agents or representatives; (ii) shall promptly repair any material physical damage to the Property actually caused by Purchaser's inspections, and in such event, Purchaser shall restore the affected area to its condition immediately prior to Purchaser's access, reasonable wear and tear excepted; and (iii) at its sole cost and expense, as promptly as possible but in no event more than sixty (60) days after Purchaser's receipt of written notice thereof, discharge of record any liens or encumbrances that are filed or recorded as the result of any inspections, investigations or other due diligence activities conducted by Purchaser and/or its designated agents or representatives. Purchaser will provide Seller with a copy of any sampling results or reports relating to any borings, drillings, samplings or invasive testing done by or at the request of Purchaser on or at the Property, if Seller gave its consent for such investigations, provided, however, that any results or reports shall be delivered to Seller without any representation or warranty, express or implied, as to the accuracy or completeness of the same. Purchaser's liabilities under this Section 3.2 shall survive the Closing or earlier termination of this Agreement.

Section 4. Title.

4.1 Seller shall convey, and Purchaser shall accept, good, marketable, and insurable fee simple title to the Property, free and clear of all liens and encumbrances, subject only to the Permitted Exceptions (hereinafter defined in Section 4.1.2).

4.1.1 Purchaser has ordered a current title insurance commitment (the "Title Commitment") to be issued by the Title Company and at Purchaser's election, an update to the Survey. Purchaser shall cause copies of the Title Commitment, all documents of record which are listed as exceptions in the Title Commitment and the Survey to be delivered to Seller.

4.1.2 Seller shall, prior to the Closing Date, satisfy all of the title requirements shown in the Title Commitment that require the delivery of documents by the Seller to the Title Company or the taking of actions by Seller and will deliver to the Title Company at Closing an owner's title affidavit and gap indemnity in a form acceptable to Seller and the Title Company. Seller shall cause to be removed, satisfied, or discharged at or prior to the Closing: (i) any mortgage, deed of trust, or other security instrument, assignment of rents and leases and/or UCC financing statements entered into by Seller and encumbering the Property, any monetary liens, monetary encumbrances, security interests, judgments, mechanic's or materialmen's liens, tax liens or other voluntary or involuntary liens consented to by Seller or arising from any act or omission of Seller which encumbers any part of the Property, and (ii) any liens or encumbrances which can be satisfied by the payment of a readily ascertainable sum (all of the foregoing hereinafter collectively referred to as the "Seller's Required Removal Items"). Any title matters and/or exceptions set forth in the Title Commitment or the state of facts shown on the Survey with respect to (a) Tenant's leasehold interest in the Property that is to commence as of Closing; (b) easements, restrictions and covenants of record, (c) any matters disclosed by the Survey, (d) the lien of nondelinquent real estate taxes and assessments not yet due and payable, (e) legal highways and rights of way, other than the Seller's Required Removal Items, are hereafter referred to as the "Permitted Exceptions".

4.1.3 At Closing, it shall be a condition to the breaking of escrow that the Title Company shall issue an ALTA Extended Owners Policy of Title Insurance to Purchaser in the amount of the Purchase Price payable on the Closing Date, insuring that Purchaser has good and marketable fee simple title to the Property, subject only to the Permitted Exceptions, showing that all taxes, assessments, and municipal charges which are due prior to the Closing Date have been paid (collectively, the "Title Policy").

Section 5. Closing Date. The sale contemplated by this Agreement shall be consummated and closed through an escrow arrangement with the Title Company on the Effective Date. The terms and conditions of such escrow arrangement shall be consistent with the terms of this Agreement and shall otherwise be reasonably acceptable to Seller, Purchaser and the Title Company. The consummation and the closing of the purchase and sale of the Property as contemplated by this Agreement are herein referred to as the "Closing", and the date of Closing is herein referred to as the "Closing Date".

Section 6. "AS IS" SALE, RELEASE.

6.1 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE PROPERTY IS BEING SOLD AND PURCHASER IS ACQUIRING THE PROPERTY IN AN "AS IS," "WHERE IS" CONDITION AND "WITH ALL FAULTS" AS OF THE EFFECTIVE DATE, SUBJECT TO NORMAL WEAR AND TEAR AND DAMAGE BY FIRE OR OTHER CASUALTY AS SET FORTH BELOW. Notwithstanding the foregoing, nothing contained in this Agreement or in this Section 6 shall release or waive Purchaser's rights or remedies with respect to: (i) any claims arising from a breach of Seller's representations, warranties, covenants or obligations under this Agreement or any document executed in connection with the Closing, (subject to the limitations on such claims expressly set forth in this Agreement), (ii) fraud, intentional misrepresentation or willful misconduct by Seller or its agents, or (iii) any rights, claims, or remedies Purchaser may have under the Lease with respect to Lessee's (as defined in the Lease) obligations relating to the Property. Except for claims made against Purchaser or the Property by unrelated third parties arising prior to Closing and except as expressly set forth herein, Purchaser, for itself and each "Purchaser Party" (as defined below), does hereby release each of the "Seller Parties" (as defined below) (excluding Tenant under the Lease) from any claims or liabilities which any such party has or may have, to the extent arising from facts or circumstances first occurring prior to Closing, arising from or related to any matter or thing related to or in connection with the Property, including but not limited to, the Property Information, physical condition, construction defects, environmental matters, and errors or omissions in design or construction, other than claims arising from (i), (ii), or (iii) above. This release shall not apply to any claims based on Seller's knowing failure to disclose material defects or conditions that materially impair the use, value, or safety of the Property. As used in the Agreement, "Seller Parties" means Seller, any parent entity, subsidiary or affiliate of Seller, and their respective shareholders, directors, members, managers, partners, officers, employees, successors and assigns; and "Purchaser Parties" means Purchaser, any parent entity, subsidiary or affiliate of Purchaser, and their respective shareholders, directors, members, managers, partners, officers, employees, successors and assigns.

6.2 Purchaser acknowledges that Purchaser is a sophisticated buyer of real estate that is familiar with this type of property. Except as otherwise specifically set forth in this Agreement, and to the maximum permitted by law, no patent or latent condition affecting the Property in any way, whether or not known or discoverable or hereafter discovered, shall affect Purchaser's obligations hereunder, nor shall any such condition give rise to any right of damages, rescission or otherwise against Seller.

6.3 Except as specifically set forth in this Agreement or in any document executed at Closing, neither Seller nor any of the Seller Parties nor any agent nor any representative nor any purported agent or representative of Seller or any of the Seller Parties have made, and neither Seller nor any of the Seller Parties are liable for or bound in any manner by (and Purchaser has not relied upon), any express or implied warranties, guaranties, promises, statements, inducements, representations or information pertaining to the Property or any part thereof.

6.4 Except as otherwise expressly set forth herein, Seller makes no representations or warranties as to the truth, accuracy, completeness, methodology of preparation or otherwise concerning any of the Property Information (e.g., that such materials are complete, accurate or the final version thereof, or that such materials are all of such materials as are in Seller's possession). It is the parties' express understanding and agreement that such materials are provided only for Purchaser's convenience in making its own examination and determination as to whether it wishes to purchase the Property. Purchaser has conducted its own due diligence and, except as set forth herein (including, without limitation, Seller's representations and warranties), is relying solely upon such investigations in electing to proceed with this transaction. Notwithstanding the foregoing or anything stated to the contrary, nothing herein shall release Seller from liability for fraud or for knowingly providing materially false or misleading due diligence materials.

6.5 THE DISCLAIMERS, RELEASES AND OTHER PROVISIONS SET FORTH IN THIS SECTION 6 SHALL SURVIVE THE CLOSING AND SHALL NOT MERGE THEREIN OR INTO ANY DOCUMENTS EXECUTED IN CONNECTION THEREWITH, BUT SHALL NOT LIMIT OR OVERRIDE ANY RIGHTS OF PURCHASER EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT OR IN ANY DOCUMENT EXECUTED BY SELLER AT CLOSING.

Section 7. Satisfaction of Liens; Violations.

7.1 If at the Closing there are any liens or Seller's Required Removal Items on the Property which Seller agrees or is obligated to pay and discharge hereunder, either Purchaser or Seller shall have the right to instruct the Title Company to use any cash portion of the Purchase Price to satisfy and discharge such items at Closing. Seller shall deliver to the Title Company at or before the Closing acceptable pay-off letters from any lien holders verifying the amounts to be paid at the Closing to satisfy and release such liens or Seller's Required Removal Items of record, and Seller authorizes the Title Company to use the Purchase Price (or a portion thereof) to pay such liens or Seller's Required Removal Items, such that Title Company will issue at the Closing the Title Policy without exception thereto; the mere existence at the Closing of any such liens or Seller's Required Removal Items to be satisfied and released out of the Purchase Price shall not be deemed unsatisfied Objections to title.

7.2 Any and all outstanding and uncured violations or notices of violations of law or municipal ordinances, sidewalk notices/liens, written orders or requirements issued by the municipality and/or governmental agencies or authorities having jurisdiction over the Property as of the Closing Date shall be removed or complied with by the Seller (or by Tenant following the Closing if any cure period for any such violation extends past the Closing Date), and Seller shall similarly be required to, at its sole cost and expense, cause the discharge, at Closing, of any outstanding and uncured monetary fines or penalties assessed against the Property in connection with said violations or notices of violations which are due and payable prior to the Closing Date. For avoidance of doubt, any such uncured violations as of the Closing Date shall not be deemed Permitted Exceptions unless Purchaser has waived such objection in writing.

Section 8. Representations, Warranties and Covenants.

8.1 Seller hereby represents, warrants and covenants for the sole, exclusive and limited benefit of Purchaser as of the Effective Date as set forth below in this Section 8. Purchaser acknowledges that certain real property more particularly described on Exhibit "A-2" (together with the improvements on such parcel, the "Warehouse Property") is, as of the date of Seller's most recent title commitment, owned by Indiana Avenue Holdings, LLC, a Minnesota limited liability company ("Indiana Holdings") and leased to Seller. Seller is not the owner of fee simple title to the Warehouse Property, and any representations or warranties that may apply to the Warehouse Property are made by Seller in its capacity as the tenant thereof and Seller's knowledge (being that of a tenant and not of a fee owner) is limited accordingly:

8.1.1 Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana and is entitled to and has all requisite power and authority to own and operate its assets as they are presently owned and operated, to enter into this Agreement and all other agreements, instruments and documents herein provided to be executed or to be caused to be executed by Seller, and to carry out the transactions contemplated hereby.

8.1.2 The execution of this Agreement by Seller, the consummation of the transactions herein contemplated has been duly authorized by all requisite action on the part of Seller, and the execution and delivery of all documents to be executed and delivered by Seller, have been or will be duly authorized by all requisite action on the part of Seller and this Agreement has been and all documents to be delivered by Seller pursuant to this Agreement, will be, duly executed and delivered by Seller, and all members or officers of Seller who execute the instruments contemplated by this Agreement will be duly authorized and empowered on behalf of Seller to do so and to enter into all transactions contemplated by this Agreement and by such instruments. This Agreement has been, and the documents contemplated herein will be, duly executed and delivered (or caused to be duly executed and delivered) by Seller, and when mutually executed and delivered will constitute the legal, valid and binding obligations of Seller or Tenant, enforceable in accordance with their respective terms (subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally).

8.1.3 Neither the execution of this Agreement nor the carrying out of the transactions contemplated herein will result in any violation of or be in conflict with the instruments pursuant to which Seller was organized and/or operates, or any applicable law, rule, regulation, order, writ, injunction or decree of any Governmental Authority, or of any instrument or agreement to which Seller is a party or by which Seller is bound or any order or decree applicable to Seller, nor will it result in the creation or imposition of any lien on the Property nor will it result in the termination or the right to terminate any agreement to which Seller is a party which affects the Property, and other than required notice to Seller's lender (if applicable), no consent, joinder, approval, authorization or order of any Governmental Authority or third party is required for the execution of this Agreement and the documents contemplated herein by Seller or Tenant or the carrying out by Seller or Tenant of the transactions contemplated herein.

8.1.4 Seller owns fee simple title to the Property and, at Closing, will convey fee simple title to the Property to Purchaser in the condition required by Section 4.1 above. The Property is assessed as one or more tax lots that are separate and distinct from any other tax lots.

8.1.5 As of the Closing Date, there will be no leases, licenses, occupancy agreements or similar agreements affecting the Property or any part thereof (except for to the Lease to be entered into with Tenant at Closing), and no party has been granted by Seller any license, lease, occupancy agreement, or other right of possession of the Property, or any part thereof. There are no tenants, subtenants, licensees, or other occupants or persons having any rights or asserting any claims for occupancy or possession of any space at the Property claiming by, through or under Seller, except Tenant, pursuant to the Lease to be entered into with Tenant at Closing.

8.1.6 There are no actions, suits, litigation, arbitration, judicial or administrative action, or other proceedings by any person, firm, corporation, or by any Governmental Authority now pending or, to Seller's knowledge, threatened in writing against or affecting the Property or any part thereof, or against or affecting Seller or Tenant that (i) could reasonably be expected to adversely affect the current use, operation, or value of the Property, (ii) could reasonably be expected to adversely affect Seller's ability to perform its obligations under this Agreement or Tenant's ability to perform its obligations under the Lease; (iii) could reasonably be expected to prevent, restrain, prohibit, delay or enjoin Seller from entering into or performing its obligations under this Agreement and transferring the Property to Purchaser at Closing; or (iv) could reasonably be expected to prevent, restrain, prohibit, delay or enjoin Tenant from entering into or performing its obligations under the Lease; or (v) involve any proposed change in any private restriction applicable to the Property.

8.1.7 Seller is not a foreign person, as defined in Section 1445 of the Internal Revenue Code, as amended, and the regulations promulgated thereunder (the "Code"), and in any applicable state laws for the state in which the Property is located.

8.1.8 Seller has not received any written notice of and has no knowledge of any pending or threatened (a) eminent domain proceedings affecting the Property, in whole or in part, (b) assessments against the Property not reflected in the current tax duplicate or tax bills, or (c) action or proceeding to change road patterns or grades which would affect ingress to or egress from the Property. As long as this Agreement is in effect Seller has not and shall not, without the prior written consent of Purchaser, take any action before any Governmental Authority, the object of which would be to change the present zoning of or other land-use limitations, upon the Property, or any portion thereof, or its potential use, or ingress to or egress from the Property and, to Seller's knowledge, there are no pending proceedings, the object of which would be to change the present zoning or other land-use limitations, or the ingress to or egress from the Property.

8.1.9 There are no employees of Seller at the Property or any collective bargaining agreements, employee benefit plans or other employee agreements affecting the Property that will be binding upon Purchaser after Closing. Seller is not a “plan” within the meaning of Section 4975(e) of the Code, and the transaction contemplated by this Agreement is not a “prohibited transaction” within the meaning of Section 4975(c) of the Code or Section 406 of the Employee Income Security Act of 1974, as amended, or is covered by an individual or class exemption from the prohibited transaction rules.

8.1.10 Schedule 2 contains a list of the existing insurance policies maintained by Tenant with respect to the Property (the “Existing Insurance Policies”). Seller has received no written notice from any insurance company or board of fire underwriters requesting the performance of any work or alterations with respect to the Property that has not been performed or required an increase in insurance rates applicable to the Property as a result of a failure to perform any such requested work or alterations. There is no outstanding written notice from any insurance company of a default, cancellation, or non-renewal under any Existing Insurance Policies. Seller has not received any written notice or demand from any insurance company to correct or change any physical condition on the Property or any practice of Seller. Each of the Existing Insurance Policies is in full force and effect, and Seller is in compliance in all material respects with the requirements of each of the Existing Insurance Policies.

8.1.11 On the Closing Date, there will be no contract or agreement in effect for the leasing or management of the Property for or pursuant to which Purchaser shall be bound.

8.1.12 Seller has not (i) commenced (within the meaning of any federal or state bankruptcy law) a voluntary bankruptcy case or assignment for the benefit of creditors, (ii) consented to the entry of an order for relief against it in an involuntary bankruptcy case, or (iii) consented to the appointment of a receiver for or custodian of it or for all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any federal or state bankruptcy law that is for relief against Seller in an involuntary case or appointed a receiver for or custodian of Seller for all or any substantial part of its property.

8.1.13 Seller has not received any uncured written notice from any Governmental Authority of the violation of any Environmental Laws (as hereinafter defined) or of the presence or use of Hazardous Materials (as hereinafter defined) in violation of any Environmental Laws. Seller has received no written notices of any investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Authority which are pending or threatened in connection with any Environmental Activity or alleged Environmental Activity. “Environmental Activity” means any actual, proposed or threatened storage, holding, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Materials from, under, into or on the Property or otherwise relating to the Property or the use of the Property, or any other activity or occurrence that causes or would cause any such event to exist, except, in each case, for such quantities and concentrations of Hazardous Materials as (a) are reasonably and customarily required for the conduct of the business in question and are present in strict compliance with all Environmental Laws or (b) are in concentrations or amounts which would not require corrective action or remediation under Environmental Laws. “Environmental Laws” means all laws, codes, ordinances, orders, requirements or regulations of any Governmental Authority which relate to the manufacture, processing, distribution, use or storage of Hazardous Materials. “Hazardous Materials” shall mean:

(i) Those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” or “solid waste” in the: Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et. seq.*, as amended by the Superfund Amendments and Reauthorization Act or any equivalent state or local laws or ordinances; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et. seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984, or any equivalent state or local laws or ordinances; the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136 *et. seq.* or any equivalent state or local laws or ordinances; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et. seq.*; the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. § 11001 *et. seq.* or any equivalent state or local laws or ordinances; the Toxic Substance Control Act (“TSCA”), 15 U.S.C. § 2601 *et. seq.* or any equivalent state or local laws or ordinances; or the Occupational Safety and Health Act, 29 U.S.C. § 651 *et. seq.* or any equivalent state or local laws or ordinances;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(iii) Any material waste or substance which is (A) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq. (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317) or (B) radioactive materials; and

(iv) These substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in the Hazardous Waste Management Act of 1978.

8.1.14 Seller has not entered into any undertakings or commitments with any Governmental Authority, utility company, association, or any other organization or group of individuals relating to the Property, which require the payment of money or the performance of any duty, including any obligation to make any contribution or dedication of land, or to construct, install or maintain any improvements of a public or private nature, in connection with the ownership of the Property.

8.1.15 Seller has not transferred or conveyed (or agreed to transfer or convey) any air or development rights or any other rights appurtenant to the Property.

8.1.16 Seller has not received any written notice (which has not been cured) from any Governmental Authority that the Property is in violation in any respect of any federal, state or local governmental order, regulation, statute, code or ordinance (including, without limitation, The Americans With Disabilities Act (and analogous state and local requirements) and zoning laws, regulations and ordinances) dealing with the ownership, use, construction, operation, safety or maintenance thereof. Seller has not received written notice (that has not been cured) that there is any violation of any restriction, condition or agreement contained in any easement, restrictive covenant or any similar instrument or agreement affecting the Property or any portion thereof from any party thereto or beneficiary thereof. Seller has not commenced any tax reduction proceedings.

8.1.17 No person or entity has any option, right of first refusal, right of first offer, right of reverter, reversionary interest, or other right with respect to the purchase or acquisition of the Property or any interest therein, or any interest in Seller (other than any such interest which Purchaser may have as landlord under the Lease to be signed at Closing).

8.1.18 Seller has not received any written notice of any interruption, suspension, or material defect in the supply of water, electricity, gas, sewer, or other utility services to the Property, and all such services are being supplied to the Property in the ordinary course of business.

8.1.19 Schedule 3 includes a complete list of all of the of utility contracts, service contracts and other agreements now or hereafter entered into by Seller and used in the ownership, use or operation of the Property to which Seller is a party (collectively, "Contracts"). Seller has provided Purchaser with a true and complete copy of each Contract in its possession. To Seller's knowledge, each such Contract is in full force and effect.

8.1.20 The list of permits in Schedule 4 is, to Seller's knowledge, a complete list of all governmental permits, licenses, and approvals (excluding planning and zoning approvals and certificates of occupancy) necessary in order to permit Seller to operate the Property for manufacturing, assembly, storage and related office uses (excluding, for the avoidance of doubt, such permits, licenses or approvals (x) relating solely to Seller's business and not the Property itself, and (y) the failure to obtain or maintain would not reasonably be expected to have a material adverse effect on the ability to operate the Property for its current use and/or the value of the Property) (the "Permits"). Seller has provided Purchaser with a true and complete copy of each Permit in its possession. Seller has not received written notice of any pending or threatened suspension, cancellation or amendment of any such Permit.

8.1.21 To Seller's knowledge, the list of plans in Schedule 5 is a complete list of all building plans, specifications and drawings with respect to the Improvements in the possession of Seller (the "Plans"). Seller has delivered to Purchaser correct and complete copies of the Plans.

8.1.22 The list of warranties in Schedule 6 is a complete list of all assignable guaranties or warranties with respect to the Improvements, if any, which are currently force (the "Warranties") and in the possession of Seller. To Seller's knowledge, Seller has delivered to Purchaser correct and complete copies of the Warranties in Seller's possession.

8.1.23 The Property and the Warehouse Property together constitute all real property interests necessary for the continued use, operation, and conduct of the business currently conducted by Seller, Tenant and their affiliates (as applicable) in Union City, IN (such property interests collectively, the "Union City Campus"), in substantially the same manner as such business is being conducted as of the Effective Date.

8.1.24 Except as disclosed on Schedule 7 attached hereto, neither Seller nor Tenant is a party to any lease, sublease, license, occupancy agreement, or other similar agreements relating to the Union City Campus.

8.1.25 (i) The Sublease Agreement dated as of November 15, 2021 by and between Indiana Holdings and Workhorse Group Inc., a Nevada corporation (the "Sublease Agreement") is in full force and effect, (ii) there exists no default or event which, with the passage of time or the giving of notice (or both), would constitute a default by Seller, Tenant, or any affiliate under the Sublease Agreement; (iii) all rents and other amounts due and payable under the Sublease Agreement prior to the Effective Date have been paid in full; and (iv) Seller, Tenant, or its affiliate has not received or delivered any written notice of termination, non-renewal, default, or breach under the Sublease Agreement that remains uncured.

Seller shall and does hereby indemnify against and hold Purchaser harmless from any loss, damage, liability and expense, together with court costs and reasonable attorney's fees, which Purchaser may incur by reason of any intentional misrepresentation or willful misconduct by Seller or any material breach of its covenants contained in this Agreement. Notwithstanding the foregoing or anything stated to the contrary, nothing in this Agreement shall limit, impair, or be deemed to release or discharge any obligation of Tenant under the Lease to repair, remediate, or otherwise comply with any covenant or obligation thereunder, including in connection with any matter that is the subject of or relates to a breach or inaccuracy of any representation or warranty of Seller under this Agreement.

As used in this Agreement, the words "Seller's knowledge" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed or constructive) knowledge of Bob Ginnan, CFO; Brad Hartzell, Vice President, Manufacturing, Ryan Gaul, President - Commercial Vehicles; Jim Harrington, General Counsel, Chief Compliance Officer and Secretary; and Rick Dauch, Chief Executive Officer; without any duty of inquiry or investigation, and shall not be construed to refer to the knowledge of any other officer, agent or employee of Seller or any affiliate of Seller. To the extent Purchaser acquires actual knowledge of any inaccuracy in a representation and warranty of Seller in this Agreement and the Closing occurs, such representation and warranty shall be deemed modified to reflect the inaccuracy known by Purchaser.

8.2 Purchaser hereby warrants and represents for the sole, exclusive and limited benefit of Seller as of the Effective Date, as follows:

8.2.1 Purchaser is and will continue at all times to be a limited liability company, duly organized, validly existing and in good standing in the state of its formation. Purchaser has all requisite power and authority to own and operate its assets as they are presently owned and operated, to enter into this Agreement and all other agreements, instruments and documents herein provided to be executed or to be caused to be executed by Purchaser and to carry out the transactions contemplated hereby.

8.2.2 The execution of this Agreement by Purchaser, the consummation of the transactions herein contemplated has been duly authorized by all requisite action on the part of Purchaser, and the execution and delivery of all documents to be executed and delivered by Purchaser, have been or will be duly authorized by all requisite action on the part of Purchaser and this Agreement has been and all documents to be delivered by Purchaser pursuant to this Agreement, will be, duly executed and delivered by Purchaser, and all members or officers of Purchaser who execute the instruments contemplated by this Agreement will be duly authorized and empowered on behalf of Purchaser to do so and to enter into all transactions contemplated by this Agreement and by such instruments. This Agreement has been, and the documents contemplated herein will be, duly executed and delivered by Purchaser, and when mutually executed and delivered will constitute the legal, valid and binding obligations of Purchaser, enforceable in accordance with their respective terms (subject to bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally).

8.2.3 Neither the execution of this Agreement nor the carrying out of the transactions contemplated herein will result in any violation of or be in conflict with the instruments pursuant to which Purchaser was organized and/or operates, or any applicable law, rule, regulation, order, writ, injunction or decree of any Governmental Authority, or of any instrument or agreement to which Purchaser is a party or by which Purchaser is bound or any order or decree applicable to Purchaser, nor will it result in the termination or the right to terminate any agreement to which Purchaser is a party, and no consent, joinder, approval, authorization or order of any Governmental Authority or third party is required for the execution of this Agreement by Purchaser or the carrying out by Purchaser of the transactions contemplated herein.

8.2.4 No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, proceeding for the appointment of a receiver or custodian for any of Purchaser's property, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy laws is pending against or contemplated by Purchaser or any creditors of Purchaser.

8.2.5 Purchaser is not acquiring the Property with the assets of a "plan" within the meaning of Section 4975(e) of the Code; and the transaction contemplated by this Agreement is not a "prohibited transaction" within the meaning of Section 4975(c) of the Code or Section 406 of the Employee Income Security Act of 1974, as amended, or is covered by an individual or class exemption from the prohibited transaction rules.

Notwithstanding the foregoing, Purchaser shall and does hereby indemnify against and hold Seller harmless from any loss, damage, liability and expense, together with court costs and reasonable attorney's fees, which Seller may incur by reason of any intentional misrepresentation or willful misconduct by Purchaser or any material breach of its covenants contained in this Agreement.

8.3 Patriot Act.

8.3.1 Each party hereto hereby represents and warrants to the other that neither such party is knowingly in violation of any laws relating to terrorism or money laundering, including the Executive Order (as hereinafter defined) and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act").

8.3.2 Each party hereby represents and warrants to the other that neither such party nor, to its actual knowledge, any of its respective constituents or affiliates is a "Prohibited Person" which is defined as follows: (1) a person or entity that is listed in the Annex to, or is otherwise subject to the provisions of the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (2) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order. (3) a person or entity with whom such party is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order; (4) a person or entity who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; (5) a person or entity that is named as a "specially designated national or blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tl1sdn.pdf> or at any replacement website or other replacement official publication of such list; and (6) a person or entity who is affiliated with a person or entity listed above.

8.3.3 Each party hereby represents and warrants to the other that neither such party nor, to its knowledge, any of its affiliates or constituents (i) conducts any business or engages in any transaction or dealing with any Prohibited Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (ii) deals in, or otherwise engages in any transaction relating to any property or interests in property blocked pursuant to the Executive Order; or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order or the Patriot Act. This provision shall survive the Closing.

8.4 The representations and warranties set forth in Section 8.1, Section 8.2 and Section 8.3 hereof shall survive the Closing for a period of one (1) year, and shall no longer be actionable unless and to the extent that a party provides written notice of a claim to the other party, stating the nature of the claim and the specific breach or breaches claimed in reasonable detail, within such one (1) year period. In no event shall Purchaser be entitled to make a claim for breach of such representations or warranties and Seller shall have no liability in connection therewith (i) unless and until the aggregate amount of all such claims exceeds \$50,000.00 (the "Basket"), provided, however, that once the aggregate amount of such claims exceed the Basket, Purchaser shall be entitled to recover the full amount of such claims from the first dollar, and not just the amount in excess of the Basket; or (ii) for any amount in excess of Six Hundred Thousand and No/100 Dollars (\$600,000.00) in the aggregate.

Section 9. Intentionally deleted.

Section 10. Conditions to Obligations to Close. The obligations of Seller and Purchaser, respectively, to complete the Closing are conditioned on the execution and delivery of all of the documents and other items required pursuant to this Agreement, simultaneously with the Closing, and Seller's performance of its obligations under Sections 4.1.2 and 7.2.

Section 11. Closing Documents.

11.1 At the Closing, Seller shall deliver, or cause the delivery of, the below documents to the Title Company and Purchaser, except for the Lease and materials referred to in Section 11.1.13, as to which delivery at the Closing shall be coordinated with Purchaser.

11.1.1 a limited warranty deed in the form of Exhibit "B-1" attached hereto and made a part hereof, executed by Seller and acknowledged by a notary public and in proper statutory form for recording, and reasonably acceptable to the Title Company, conveying fee title to the Property to Purchaser subject only to the Permitted Exceptions (the "Deed");

11.1.2 the Lease in the form of Exhibit "B-2" attached hereto and made a part hereof, executed by Tenant, and payment of all amounts payable under the Lease upon the execution thereof;

11.1.3 a memorandum of lease in the form of Exhibit "B-3" attached hereto and made a part hereof (the "Memorandum of Lease"), executed by Tenant and acknowledged by a notary public;

11.1.4 a general assignment transferring Seller's right, title and interest in and to Warranties, Approvals and Intangibles, in the form of Exhibit "B-4" attached hereto and made a part hereof, executed by Seller;

11.1.5 intentionally omitted.

11.1.6 a FIRPTA Affidavit executed by Seller stating that Seller is not a foreign person (as defined in Section 1445 of the Code);

11.1.7 the Indiana Sales Disclosure Form (State Form 46021) ("Sales Disclosure Form"), executed by Seller;

11.1.8 a mutually agreed final closing statement setting forth the Purchase Price due at the Closing and all closing credits and adjustments expressly provided for in this Agreement (the "Closing Statement") executed by Seller;

11.1.9 such organizational documents and authorization documentation of each party comprising Seller and such other instruments and documents executed by Seller (including without limitation, an owner's title affidavit and gap indemnity in a form reasonably acceptable to the Seller and the Title Company) as shall be reasonably required by, and satisfactory to, Purchaser and the Title Company to consummate this transaction;

11.1.10 to the extent not previously provided to Purchaser in accordance with the terms of the Lease, certificates evidencing the insurance coverage, limits and policies to be carried by Tenant under and pursuant to the terms of the Lease and endorsements naming Purchaser as an additional insured or loss payee, as applicable;

11.1.11 the Merger Agreement, executed by Purchaser and Seller and/or their respective affiliates; and

11.1.12 Intentionally omitted;

11.1.13 such other instruments and documents required to be delivered by Seller to Purchaser at Closing as otherwise set forth in this Agreement, or which shall be reasonably requested or necessary in connection with the transaction contemplated herein and which do not impose, create, or potentially create any liability or expense upon Seller not expressly required under this Agreement.

11.2 At the Closing, Purchaser shall deliver to the Title Company the following documents in addition to payment of the Purchase Price due at the Closing (except for the Lease and materials referred to in Section 11.2.9, as to which delivery at the Closing shall be coordinated with Seller):

11.2.1 the Lease, executed by landlord;

11.2.2 the Memorandum of Lease, executed by landlord and acknowledged by a notary public;

11.2.3 intentionally omitted.

11.2.4 the Sales Disclosure Form, executed by Purchaser;

11.2.5 the Closing Statement, executed by Purchaser;

11.2.6 to the extent not previously provided to Tenant in connection with the Lease, ACH or wiring instructions to facilitate the timely payment by Tenant of the rent due under the Lease, together with a W-9 form executed by landlord;

11.2.7 such organizational documents and authorization documentation of each party comprising Purchaser as shall be reasonably required by, and satisfactory to, Seller and the Title Company to consummate this transaction;

11.2.8 the Merger Agreement, executed by Purchaser and Seller and/or their respective affiliates; and

11.2.9 such other instruments and documents required to be delivered by Purchaser to Seller at Closing as otherwise set forth in this Agreement, or which shall be reasonably requested or necessary in connection with the transaction herein contemplated and which do not impose, create, or potentially create any liability or expense upon Purchaser not expressly required under this Agreement.

Section 12. Brokerage. Seller and Purchaser mutually represent and warrant to each other that there are no brokers, finders, consultants or other such parties that have been involved by them in this transaction other than CBRE ("Broker") and N/a ("Purchaser's Consultant"). Seller shall pay any brokerage commission payable to Broker in connection with the closing of the transaction contemplated herein pursuant to a separate agreement between Seller and Broker, and Seller agrees to indemnify, defend and hold Purchaser harmless against any demands, claims, losses, damages, liabilities, costs or expenses of any kind or character, including reasonable attorneys' fees, arising out of or resulting from any claim by the Broker for such commission. Purchaser shall pay any advisory or consulting fee payable to Purchaser's consultant in connection with the closing of the transaction contemplated herein pursuant to a separate agreement between Purchaser and Purchaser's Consultant, and Purchaser agrees to indemnify, defend and hold Seller harmless against any demands, claims, losses, damages, liabilities, costs or expenses of any kind or character, including reasonable attorneys' fees, arising out of or resulting from any claim by Purchaser's Consultant for such fee. Seller and Purchaser shall indemnify, defend and hold harmless the other against any demands, claims, losses, damages, liabilities, costs or expenses of any kind or character, including reasonable attorneys' fees, arising out of or resulting from the breach of their respective representations and/or agreements hereunder. The provisions of this Section shall survive the Closing or the earlier termination of this Agreement.

If to Seller: Workhorse Motor Works Inc.
c/o Workhorse Group Inc.
3600 Park 42 Drive, Suite 160E
Sharonville, Ohio 45241
Attention: Jim Harrington, General Counsel
E-Mail: jim.harrington@workhorse.com

With a copy to: Frost Brown Todd LLP
3300 Great American Tower
Cincinnati, Ohio 45202
Attention: John C. Krug, Esq.
E-Mail: jkrug@fbtlaw.com

If to Purchaser: Mango Workhorse, LLC
[Omitted.]

With a copy to: DLA Piper LLP (US)
303 Colorado Street, Suite 3000
Austin, Texas 78701
Attention: Brent Bernell
E-Mail: brent.bernell@us.dlapiper.com

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Section 14. Prorations and Costs.

14.1 Seller and Purchaser agree that any apportionments or prorations to be made pursuant to the terms hereof shall be made as of midnight (Eastern time) of the day preceding the Closing Date, with Purchaser receiving credit and bearing costs for Closing Date and thereafter, and Seller receiving credit and bearing costs for the period prior to the Closing Date. Any errors or omissions in computing apportionments or prorations at Closing shall be promptly corrected. The obligations set forth in this Section 14 shall survive the Closing.

14.2 Inasmuch as the Lease is a net lease, there will be no prorations of costs or expenses relating to the Property at Closing, other than, if applicable, prorations of the monthly base rent payable by Tenant under the Lease for the calendar month in which the Closing occurs.

14.3 If, after Closing, it is determined that any item of income or expense was apportioned or prorated at Closing in error or on the basis of an estimate, or if it is determined that the parties failed to apportion or prorate an item at Closing which should have been prorated in accordance with this Agreement, Purchaser and Seller promptly upon discovery of such error, agree to calculate in good faith the proper apportionments or prorations of such item that should have been made, and, if it is determined that either party is required to pay the other a sum based on such post-Closing apportionment or proration, the party owing such sum shall pay the same to the other within fifteen (15) days after such amount has been determined.

14.4 Purchaser's Costs. Purchaser shall pay:

14.4.1 The fees and disbursements of Purchaser's counsel, accountants and advisors, and Purchaser's due diligence costs as set forth in Section 3.1 hereof;

14.4.2 One-half (1/2) of any closing escrow fees of the Title Company;

14.4.3 The cost of the Title Policy, the title search and exam fees relating to the Title Commitment, any charges for endorsements to the Title Policy and any fees for the recording of the Deed; and any search and exam fees, commitment fees, title premiums and endorsement costs for any loan policy of title insurance issued to Purchaser's lender, and the cost of recording any mortgage, assignment of rents or other security documents relating to Purchaser's financing (if any);

14.4.4 The cost of any update to the Survey (including changing or adding certifications, if the applicable third party charges an additional fee therefor) or if Purchaser obtains a new survey;

14.4.5 Any costs relating to any financing obtained by Purchaser (including, without limitation, any mortgage taxes);
and

14.4.6 The fees payable to Purchaser's Consultant.

14.5 Seller's Costs. Seller shall pay:

14.5.1 The fees and disbursements of Seller's counsel, accountants and advisors;

14.5.2 One-half (1/2) of any closing escrow fees of the Title Company;

14.5.3 The cost of releasing and/or discharging all liens, judgments, Seller's Required Removal Items, and other encumbrances, including, without limitation, any existing mortgages on the Property, that are to be released, cured, and/or discharged under this Agreement by Seller, including the cost of recording such releases;

14.5.4 Any transfer taxes, stamp or documentary taxes, recording taxes, or deed taxes, however denominated, payable or due in connection with, or relating to, the conveyance of the Property to Purchaser; and

14.5.5 The commission payable to the Broker.

14.6 All other costs and expenses incident to the transaction contemplated hereby and the Closing thereof shall be paid in the manner customary for commercial real estate transactions in the state and county in which the Property is located.

Section 15. Intentionally Deleted.

Section 16. Remedies. Acceptance by Purchaser of the Deed at the Closing shall constitute an acknowledgment by Purchaser of the full performance by and compliance by Seller with all of Seller's representations, warranties and obligations under this Agreement, including any and all obligations respecting the condition of, and title to, the Property, whether expressed or implied, and Seller shall thereafter be released and discharged of all liability hereunder except for (i) those representations, warranties and obligations of Seller, if any, expressly set forth in this Agreement to survive the Closing, and (ii) claims, if any, arising from Seller's fraud, intentional misrepresentation or willful misconduct. The provisions of this Section 16.4 shall survive the Closing or the termination of this Agreement.

Section 17. Reporting Requirements. Purchaser and Seller shall each deposit such other instruments required to close the escrow and consummate the purchase and sale of the Property in accordance with the terms hereof, including, without limitation, an agreement designating the Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Code, and executed by Seller, Purchaser and the Title Company, but in no event shall such instruments impose, create or potentially create any liability for Seller or Purchaser not expressly provided for herein. Such agreement shall comply with the requirements of Section 6045(e) of the Code.

Section 18. Miscellaneous.

18.1 This Agreement constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, and supersedes any other previous agreement, oral or written, between the parties. This Agreement cannot be changed, amended, modified, waived, discharged or terminated except by a written instrument which shall expressly refer to this Agreement, and which shall be executed by the party against whom enforcement of the change, amendment, modification, waiver, discharge or termination shall be sought.

18.2 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.

18.3 In the event of any dispute between Seller and Purchaser which becomes the subject of litigation, the non-prevailing party agrees to pay the reasonable legal fees and all related costs, including those of any expert witnesses, of the prevailing party. For purposes of this Section 18, a party shall be considered to be the "prevailing party" if (a) such party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other party, trial, or alternative dispute resolution process), (b) such party did not initiate the litigation and either (i) received a judgment in its favor, or (ii) did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (c) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking. The provision of this Section 18 shall survive the Closing or the termination of this Agreement.

18.4 This Agreement may be executed in any number of counterparts and may be executed and delivered by PDF or e-mail, each of which when so executed and delivered shall be deemed an original, and all of which taken together shall constitute one and the same original, and the execution of separate counterparts by Purchaser and Seller shall bind Purchaser and Seller as if they had each executed the same counterpart. Electronic signatures, whether digital or encrypted (including, without limitation, any signatures via DocuSign, Adobe Sign or other similar electronic signature service), of the undersigned are intended to authenticate this writing and to have the same force and effect as manual signatures.

18.5 This Agreement shall be governed, construed and enforced in accordance with the laws of the State of in which the Property is located from time to time in effect, without giving effect to the principles of conflicts of law of such State. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE WHERE THE PROPERTY IS LOCATED, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH. THE PARTIES HERETO HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER OF ANY KIND WHATSOEVER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT, ANY DOCUMENT RELATED HERETO OR THE RELATIONSHIPS ESTABLISHED THEREUNDER.

18.6 The Article and Section headings in this Agreement are inserted only as a matter of convenience or reference and are not to be given any effect and do not constitute substantive matters to be considered in construing same. The exhibits and schedules attached to this Agreement and referred to herein are hereby incorporated into this Agreement by this reference and made a part hereof for all purposes.

18.7 The provisions of this Agreement are severable, and if any provision or part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part hereof to other persons or circumstances shall not be affected thereby, unless the invalidation of such provision or its application materially interferes with the intent of the parties hereto.

18.8 The provisions of this Agreement and of the documents executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

18.9 Submission of this form of Agreement for examination shall not bind Seller or Purchaser in any manner nor be construed as an offer to sell and no contract or obligations of Seller or Purchaser shall arise until this Agreement is executed by both Seller and Purchaser.

18.10 Seller or Purchaser will not, by virtue of this Agreement, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venture. In addition, by virtue of this Agreement there shall not be deemed to have occurred a merger of any joint enterprise between Purchaser and Seller.

18.11 Each of the parties agrees that upon request from the other party following the Closing and without further consideration, such party shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts or instruments as shall be reasonably requested by a party in order to effect or carryout the transactions contemplated herein, including executing an amendment of this Agreement to include any required state specific provisions inadvertently omitted from the Agreement, provided same do not impose any obligations or liabilities upon the party not contemplated in this Agreement.

18.12 For the purposes of this Agreement, unless the context otherwise requires and whether or not stated: the terms “include”, “including” and “such as” shall be construed as if followed by the phrases “without being limited to”, “but not limited to” or “without limitation”; the words “herein”, “hereof”, “hereby”, “hereunder” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular Article or Section unless expressly so stated; terms used in the singular shall include the plural, and vice-versa, as the context requires; and all words or terms used in this Agreement, regardless of the number or gender in which they are used, shall include any other number or gender, as the context may require. Except as otherwise specifically indicated, all references in this Agreement to Article and Section numbers refer to Articles and Sections of this Agreement, and all references to Exhibits and Schedules refer to the Exhibits and Schedules attached or annexed to this Agreement. References to contracts, agreements and other contractual instruments shall be deemed to include all subsequent amendments, supplements and other modifications thereto, but only to the extent such amendments, supplements and other modifications are not prohibited by the terms of this Agreement. References to specific statutes include (i) any and all amendments and modifications thereto in effect at the time in question, (ii) successor statutes of similar purpose and import and (iii) all rules, regulations and orders promulgated thereunder. The parties acknowledge and agree that the parties and their counsel have had the opportunity, and have reviewed and revised this Agreement and agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments thereto.

18.13 No single or partial exercise by Seller or Purchaser of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law, except to the extent a remedy or determination provided for in this Agreement is expressly stated to be exclusive, binding, or words of like effect.

18.14 If more than one party signs this Agreement as either Seller or Purchaser, their respective obligations under this Agreement shall be joint and several.

18.15 Seller and Purchaser acknowledge and agree that this Agreement shall not be recorded of public record in the county in which the Property is located or any other county.

18.16 Seller acknowledges that the Purchase Price (i) represents fair and adequate consideration for the sale and conveyance of the Property; (ii) is predicated on Seller's sound and reasonable exercise of its business judgment; (iii) provides fair and reasonably equivalent value to Seller compared to the value of the Property; and (iv) was negotiated in good faith without subjecting Purchaser to any successor or derivative liability. The sale of the Property pursuant to this Agreement was not done to avoid, frustrate or circumvent the payment of legitimate debts and obligations to any of Seller's third-party creditors or otherwise.

18.17 Seller and Purchaser acknowledges that this Agreement is entered into by and between Seller and Purchaser and each party agrees that no shareholder or individual officer, director, trustee, asset manager, employee, member, agent or other representative of the other party shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

18.18 Time is of the essence of this Agreement. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day of any period falls on a Saturday, Sunday or legal holiday under the laws of the State in which the Property is located or the United States of America, the final date of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. The term "days" as used herein shall mean calendar days, with the exception of "business days", which term shall mean each day except for any Saturday, Sunday or legal holiday under the laws of the State in which the Property is located or the United States of America.

18.19 If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and, the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

18.20 Purchaser agrees to hold, in confidence and not to communicate, the content of any and all information in respect of the Property which is supplied by Seller to Purchaser or obtained by Purchaser, including but not limited to the Property Information, without the express written consent of Seller; provided, however, that Purchaser may, without consent, disclose information: (i) to its members, partners, officers, partners, employees, agents, advisors, consultants, attorneys, accountants and lenders (the "Permitted Parties") without the express written consent of Seller, so long as any such Permitted Parties to whom disclosure is made shall also agree to keep all such information confidential in accordance with the terms hereof; (ii) if such information (a) already is or becomes generally available to the public other than as a result of a disclosure by Purchaser or its agents, (b) was or becomes available or known to Purchaser on a non-confidential basis from a source other than Seller or its agents, provided that such source was not bound by a confidentiality agreement, or (c) information which is independently developed, discovered or arrived at by Purchaser or its representatives; or (iii) if disclosure is required by law or by regulatory or judicial process, in which case Purchaser shall notify Seller in writing of such required disclosure and shall use commercially reasonable efforts (such as, without limitation, seeking a protective order) to preserve the confidentiality of the confidential documents or information. Except as provided in the following sentence, neither Purchaser nor Seller shall issue any press releases (or other public statements) with respect to the transaction contemplated in this Agreement, whether prior or subsequent to Closing, without the approval of the other party, which approval may not be unreasonably withheld. Notwithstanding the foregoing, Purchaser acknowledges that promptly upon execution of this Agreement, (i) Seller will file a disclosure on Form 8-K with the U.S. Securities and Exchange Commission regarding this Agreement and the sale and leaseback transaction, in accordance with applicable law and (ii) as part of the Closing, Seller and Purchase will file the Indiana Sales Disclosure Form (State Form 46021).

Section 19. [Reserved.]

Section 20. 1031 Exchange. Seller and Purchaser shall each have the right to structure the purchase and sale of the Property as a transfer of property in an exchange of like kind property under Section 1031 of the Code ("Exchanges"), pursuant to the terms of separate exchange agreements between Seller and/or Purchaser and qualified intermediaries to be engaged by Seller and/or Purchaser, respectively (each an "Intermediary" and collectively, the "Intermediaries"). Each party agrees to reasonably cooperate promptly and reasonably with the other (without liability or cost to the other) and the other's Intermediary in structuring the transfer and conveyance of the Property as part of an Exchange. Such cooperation shall include, but not be limited to (i) consent to the assignment of all of the party's rights (but not its obligations) under this Agreement to the Intermediary, and acknowledgment of such assignment, (ii) the delivery of the net purchase price for the Property by Purchaser to the Seller's Intermediary in accordance with the joint instructions of the Seller and its Intermediary, (iii) the transfer of the Property pursuant to a written direction of the Purchaser's Intermediary and (iv) the reassignment of a party's rights under this Agreement from its Intermediary to the original assignor immediately following the completion of the Exchanges, and the acknowledgment by the other party of such reassignments. Each party agrees to fully indemnify the other party from any resulting liability to third parties (including, but not limited to, the Intermediaries) arising out of such party's cooperation with the Exchanges for the benefit of the indemnifying party, which indemnity shall be effective from and after the date of this Agreement and shall survive the Closing of the transactions contemplated hereunder. The obligation of a party to cooperate in an exchange by the other party under this provision shall be subject to the following:

20.1 The Closing shall not be extended or delayed by reason of such Exchange;

20.2 The non-assigning party shall not be required to incur any additional liability, cost or expense as a result of such Exchange, and the assigning party shall forthwith, on demand, reimburse the non-assigning party for any additional cost or expense excepting for attorney's fees incurred by the non-assigning party as a result of the Exchange in reviewing documents;

20.3 The assigning party's ability to consummate the Exchange shall not be a condition to the obligations of assigning party under this Agreement, and the non-assigning party does not warrant and shall not be responsible for any of the tax consequences to assigning party with respect to the transactions contemplated hereunder;

20.4 Neither Seller nor Purchaser shall be required to acquire additional property other than the Property; and

20.5 Any qualified intermediary shall not be required to assume (or be deemed to have assumed) any liability under this Agreement by acting as qualified intermediary and taking an assignment of the rights under this Agreement for purposes of acting as qualified intermediary.

20.6 In the event of the assignment of a party's rights to an Intermediary, the assigning party shall remain fully liable under this Agreement and in the event of such party's default under or breach of this Agreement, the other party may pursue any rights or remedies directly against the defaulting party.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

SELLER:

WORKHORSE MOTOR WORKS INC.,
an Indiana corporation

By: _____
Name: Robert Ginnan
Title: Vice President

PURCHASER:

MANGO WORKHORSE, LLC,
a Florida limited liability company

By: /s/ Chelsea Magness
Name: Chelsea Magness
Title: Authorized Person

EXHIBIT "A-1"

Description of Land

Parcel II:

The parcel of real property situated in the Northeast Quarter and the Northwest Quarter of Fractional Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana, more particularly described as follows:

Commencing at an iron rod found at the southeast corner of said Northeast Quarter, in Indiana State Highway No. 32;

thence North 89°40'45" West 679.66 feet along the south line of said Northeast Quarter, to an iron rod found at the POINT OF BEGINNING for said parcel;

thence North 89°40'45" West 1970.08 feet continuing along the south line of said Northeast Quarter, to an iron rod found at the southwest corner of said Northeast Quarter;

thence North 00°20'45" West 234.15 feet along the east line of said Northwest Quarter, to a wood post found;

thence North 89°38'45" West 425.03 feet, entering into the Northwest Quarter of said Section 35, to an iron rod set (all iron rods set with plastic cap stamped 7955);

thence North 00°20'45" West 805.60 feet parallel with the east line of said Northwest Quarter, to an iron rod set;

Thence South 89°40'45" East 1115.03 feet parallel with the south line of said Northeast Quarter, and re-entering into said Northeast Quarter, to an iron rod set;

thence South 00°00'00" East 263.00 feet parallel with the west line of said Northeast Quarter, to an iron rod set;

thence South 89°40'45" East 114.58 feet parallel with the south line of said Northeast Quarter, to an iron rod set;

thence South 00°20'45" East 103.76 feet parallel with the west line of said Northeast Quarter, to an iron rod set;

thence South 89°40'45" East 1850.80 feet parallel with the south line of said Northeast Quarter, to a mag nail set on the east line of said Northeast Quarter, in Indiana State Highway No. 32;

thence South 00°00'00" East 154.05 feet along said east line, in said road, to a mag nail set; thence North 89°40'45" West 679.66 feet parallel with the south line of said Northeast Quarter, to an iron rod set;

thence South 00°00'00" East 519.14 feet parallel with the east line of said Northeast Quarter, to the point of beginning, containing 46.815 acres, more or less, being 38.954 acres, more or less, in the Northeast Quarter, and 7.861 acres, more or less, in the Northwest Quarter, as shown on Drawing No. D-554, dated 28th July 2005.

FOR INFORMATION: APN: 68-02-35-104-004.000-019; 017-02013-00

LESS AND EXCEPT that 7.861 acre parcel conveyed in Deed recorded December 5, 2023 in Instrument No. 20234766, Randolph County, Indiana Records.

Parcel III:

Situated in the Northeast Quarter, Fractional Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana, being part of a 127.003 acre tract, as described in Instrument 20072891, as recorded in the Randolph County Recorder's Office, as shown on a survey certified by Gordon E. Moore, P.S. 20400025, as Beals-Moore & Associates, Inc., dated 10 May 2023, W.O. 2023-033, Drawing No. D-4597, and being more particularly described as follows:

Commencing at an iron rebar found at the southwest corner of said Quarter; thence North 00°20'45" West (bearings are based upon the east line of the Northeast Quarter of Fractional Section 35, Township 18 North, Range 1 West as being North 00°00'00" East, per prior surveys) 1040.00 feet along the west line of said Quarter, to the north line of a 46.815 acre tract, as described in Instrument 20224579, also being the POINT OF BEGINNING for the tract herein described;

thence North 00°20'45" West 889.05 feet, continuing along the west line of said Quarter, to the south right-of-way of the Penn-Central Railroad;
thence North 76°27'55" East 12.86 feet along said right-of-way line, to a concrete post found;
thence South 00°20'45" East 48.71 feet, continuing along said right-of-way line, to a concrete post found;
thence North 76°27'55" East 582.81 feet, continuing along said right-of-way line, to an iron rebar found at the northwest corner of a 46.010 acre tract, as described in Instrument 20222604;
thence South 00°20'45" East 982.99 feet along the west line of said 46.010 acre tract, to an iron rebar found on the north line of the aforementioned 46.815 acre tract;
thence North 89°40'45" West 580.00 feet along said north line, to the point of beginning, containing 12.152 acres, more or less.

FOR INFORMATION: APN: 68-02-35-104-002.000-019; 017-02059-00

Parcel IV:

Situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, City of Union City, Wayne Township, Randolph County, Indiana, being part of a 127.003 acre tract as described in Instrument 20055506, as recorded in the Randolph County Recorder's Office, being more particularly described as follows:

commencing at an iron rod found at the Southeast corner of said Quarter, in Indiana State Highway No. 32; thence North 00° 00' 00" East 1289.70 feet along the East line of said Quarter, in said Road, to a mag nail set at the point of beginning for the tract herein described, witness an iron rod set South 00° 00' 00" West 40.00 feet (all iron rods set are 5/8" rebar with plastic cap stamped "RLS 2040025"); thence South 90° 00' 00" West 1203.84 feet along the South corporation line of Union City, to an iron rod set; thence North 00° 00' 00" East 920.21 feet along the West corporation line of Union City, to an iron rod set on the South line of the Penn-Central Railroad, also being the North line of said 127.003 acre tract; thence North 76° 27' 55" East 878.23 feet along the South line of said Railroad, and the North line of said 127.003 acre tract, to the Northwest corner of a 1.826 acre tract, as described In Deed Record Book 273, page 236; thence South 00° 00' 00" West 285.75 feet along the West line of said 1.826 acre tract, and the West line of a tract as described in Instrument 20061918, to an iron rod found; thence North 90° 00' 00" East 350.00 feet along the South line of the tract described in Instrument 20061918, to a railroad spike found in the East line of said Quarter, in Jackson Pike; thence South 00° 00' 00" West 840.00 feet along the East line of said Quarter, in Jackson Pike and Indiana Highway No. 32, to the point of beginning, containing 26.801 acres, more or less, as shown on Drawing No. D-1223, dated May 7th, 2007, being subject to the rights-of-way of Indiana Highway No. 32 and Jackson Pike and all legal easements of record;

EXCEPTING THEREFROM so much as was conveyed by Deed dated 10/16/2007, recorded 10/18/2007, in Instrument No. 20075210 from R & D Holdings, LLC to Paulding Towers, Ltd. and being further described as follows:

the following described real estate in Randolph County, State of Indiana: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20055506, as recorded in the Randolph County Recorder's Office, being more particularly described as follows: commencing at an iron road found at the Southeast corner of said Quarter; thence North 00° 00' 00" East (bearings based upon the East line of Quarter, as being North 00° 00' 00" East per Instrument 20055506) 2136.27 feet along the East line of said Quarter, in Indiana State Highway No. 32, and Jackson Pike; thence North 88° 56' 32" West 696.99 feet; thence South 76° 31' 03" West 156.93 feet, to the point of beginning of the tract herein described: thence South 00° 00' 00" West 87.15 feet, to an iron rod set (all iron rods set are 5/8" rebar with plastic cap stamped "RLS 20400025"); thence North 90° 00' 00" West 100.00 feet, to an iron rod set; thence North 00° 00' 00" East 100.00 feet, to an iron rod set; thence South 90° 00' 00" East 100.00 feet, to an iron rod set; thence South 00° 00' 00" West 12.85 feet, to the point of beginning, containing 0.230 acres, more or less, as shown on Drawing No. D-1263, dated July 3, 2007, being subject to all legal easements of record.

ALSO a 25.00 foot wide ingress and egress easement, lying 12.50 feet on each side of the following described centerline, the side lines of said 25.00 feet easement to be extended or shortened to meet at angle points: commencing at an iron rod found at the Southeast corner of said Quarter; thence North 00° 00' 00" East (bearings based upon the East line of Quarter, as being North 00° 00' 00" East per Instrument 20055506) 2136.27 feet along the East line of said Quarter, in Indiana Highway No. 32, and Jackson Pike, to the point of beginning of the centerline of the easement herein described; thence North 88° 56' 32" West 696.99 feet, to a point; thence South 76° 31' 03" West 156.93 feet, to the end of the easement herein described.

ALSO a 40.00 feet wide guy wire easement, laying 20.00 feet on each side of the following described centerline, the side lines of said 40.00 feet easement to be extended or shortened to meet at angle points; commencing at an iron rod found at the Southeast corner of said Quarter; thence North 00° 00' 00" East (bearings based upon the East line of Quarter, as being North 00° 00' 00" East per Instrument 20055506) 2136.27 feet along the East line of said Quarter, in Indiana State Highway No. 32, and Jackson Pike; thence North 88° 56' 32" West 696.99 feet, to a point; thence South 76° 31' 03" West 156.93 feet, to a point; thence North 00° 00' 00" East 12.85 feet to an iron rod set at the point of beginning of the easement herein described; thence North 45° 00' 00" East 224.29 feet, to the end of the easement therein described, witness an iron rod set South 45° 00' 00" West 20.00 feet.

ALSO a 40.00 feet wide guy wire easement, laying 20.00 feet on each side of the following described centerline, the side lines of said 40.00 feet easement to be extended or shortened to meet at angle points; commencing at an iron rod found at the Southeast corner of said Quarter; thence North 00° 00' 00" East (bearings based upon the East line of Quarter, as being North 00° 00' 00" East per Instrument 20055506) 2136.27 feet along the East line of said Quarter, in Indiana State Highway No. 32, and Jackson Pike; thence North 88° 56' 32" West 696.99 feet, to a point; thence South 76° 31' 03" West 156.93 feet, to a point; thence South 00° 00' 00" West 87.15 feet, to an iron rod set (all iron rods set are 5/8" rebar with plastic cap stamped "RLS 20400025"); thence North 90° 00' 00" West 36.60 feet, to the point of beginning of the easement herein described; thence South 15° 00' 00" East 243.24 feet, to the end of the easement herein described, witness an iron rod set North 15° 00' 00" West 20.00 feet.

ALSO a 40.00 feet wide guy wire easement, laying 20.00 feet on each side of the following described centerline, the side lines of said 40.00 feet easement to be extended or shortened to meet at angle points; commencing at an iron rod found at the Southeast corner of said Quarter; thence North 00° 00' 00" East (bearings based upon the East line of Quarter, as being North 00° 00' 00" East per Instrument 20055506) 2136.27 feet along the East line of said Quarter, in Indiana State Highway No. 32, and Jackson Pike; thence North 88° 56' 32" West 696.99 feet, to a point; thence South 76° 31' 03" West 156.93 feet, to a point; thence North 00° 00' 00" East 12.85 feet, to an iron rod set (all iron rods set are 5/8" rebar with plastic cap stamped "RLS 20400025"); thence North 90° 00' 00" West 100.00 feet, to an iron rod set; thence South 00° 00' 00" West 36.60 feet, to the point of beginning of the easement herein described; thence North 75° 00' 00" West 243.24 feet, to the end of the easement herein described, witness an iron rod set South 75° 00' 00" East 20.00 feet.

ALSO EXCEPTING THEREFROM so much as was conveyed by Deed dated 10/16/2007, recorded 2/11/2015, in Instrument No. 20150385 from R & D Holdings, LLC to Active Farm & Truck Service LLC and being further described as follows:

the following described real estate in Randolph County, State of Indiana: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being more particularly described as follows: commencing at a brass plug found at the Southeast corner, of said Quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 2165.70 feet along the East line of said Northeast Quarter, in said State Highway and in Jackson Pike, to a railroad spike found at the Southeast corner of a tract, as described in Instrument 20061918; thence North 89° 36' 21" West 395.65 feet along the South line of said tract, and the extension thereof, to an iron rod set at the point of beginning for the tract herein described: thence South 00° 26' 56" West 367.32 feet, to an iron rod set; thence South 89° 14' 46" West 189.70 feet, to an iron rod set; thence North 00° 26' 26" East 371.12 feet, to an iron rod set; thence South 89° 36' 21" East 189.71 feet to the point of beginning, containing 1.608 acres, more or less, as shown on Drawing No. D-3077, dated October 22, 2014, being subject to all legal easements of record.

ALSO a 25.00 foot wide ingress and egress easement, lying 12.50 feet on each side of the following described centerline: commencing at the Northeast corner of the above described 1.608 acre tract; thence South 00° 26' 56" West 21.93 feet along the East line of said 1.608 acre tract, to the point of beginning for the centerline of the easement herein described; thence South 88° 32' 53" East 395.29 feet along said centerline, to the East line of said Northeast Quarter, and the end of the easement herein described.

BEING SUBJECT TO: a 25 foot wide ingress and egress easement, lying 12.50 feet on each side of the following described centerline; commencing at the Northeast corner of the above described 1.608 acre tract; thence South 00° 26' 56" West 21.93 feet along the East line of said 1.608 acre tract, to the point of beginning for the centerline of the easement herein described; thence North 88° 32' 53" West 189.74 feet along said centerline, to a point on the West line of said 1.608 acre tract, an the end of the easement herein described;

ALSO SUBJECT TO a 25.00 feet wide ingress and egress easement, as described in Instrument 20075210;

ALSO EXCEPTING THEREFROM so much as was conveyed by Deed dated 04/-/2015, recorded 04/14/2015, in Instrument No. 20151178 from R & D Holdings, LLC to Kerns Bros., Inc., and being further described as follows:

the following described real estate in Randolph County, State of Indiana: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township. Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being more particularly described as follows: commencing at a brass plug found at the Southeast corner, of said Quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 1783.05 feet along the East line of said Northeast Quarter, in said Highway and in Jackson Pike, to the point of beginning for the tract herein described, witness an iron rod set South 89° 46' 45" West 40.00 feet (all iron rods set are 5/8" rebar with plastic cap stamped "Beals-Moore RLS 20400025"); thence South 89° 46' 45" West 396.04 feet, to an iron rod set on the extension of the East line of a 1.608 acre tract, as described in Instrument No. 20150385; thence North 00° 26' 56" East 386.71 feet along said extension and along said East line, to an iron rod found with a plastic cap stamped Beals-Moore RLS 20400025, at the Northeast corner of said 1.608 acre tract, and being on the extension of the South line of a tract as described in Instrument No. 20061918; thence South 89° 36' 21" East 395.65 feet along the extension and along said South line, to a spike found on the East line of said Northeast Quarter, in said Indiana State Highway No. 32 and said Jackson Pike, witness an iron road set North 89° 36' 21" West 40.00 feet; thence South 00° 23' 39" West 382.46 feet along said East line, in State Highway No. 32 and Jackson Pike, to the point of beginning, containing 3.495 acres, more or less, as shown on Drawing No. D-3162, dated March 16, 2015, being subject to the right-of-way of Indiana State Highway No. 32 and the right-of-way of Jackson Pike, and to all legal easements of record.

ALSO EXCEPTING THEREFROM so much as was conveyed by Deed dated 8/7/2017, recorded 12/01/2017, in Instrument No. 20174131 from R & D Holdings, LLC to Active Farm & Truck Service LLC and being further described as follows:

the following described real estate in Randolph County, State of Indiana: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being more particularly described as follows:

commencing at a brass plug found at the Southeast corner, of said Quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 1,563.89 feet along the East line of said Quarter, in said Highway, to the Southeast corner of a 4.000 acre tract, witness an iron rod set South 89° 46' 45" West 40.00 feet (all iron rods set are 5/8" rebar with plastic cap stamped "Beals-Moore RLS 20400025"); thence South 89° 46' 45" West 765.45 feet along the South line of said 4.000 acre tract, to an iron rod set; thence North 00° 27' 52" East 235.12 feet along the West line of said 4.000 acre tract, to an iron rod set at the point of beginning of the tract herein described: thence North 00° 27' 52" East 374.71 feet, to an iron rod set; thence North 89° 36' West 75.90 feet, to an iron rod set; thence North 00° 35' 52" East 167.81 feet, to an iron rod set on the South right-of-way line of New York Central Lines Railroad; thence North 76° 51' 34" East 503.96 feet along said South right-of-way line, to an iron rod found at the Northeast corner of said 26.801 acre tract; thence South 00° 23' 39" West 285.75 feet along an East line of said 26.801 acre tract, to an iron rod found on the North line of a 3.495 acre tract, as described in Instrument No. 20151178; thence North 89° 36' 21" West 235.36 feet along said North line and the North line of a 1.608 acre tract, as described in Instrument No. 20150385, to an iron rod found; thence South 00° 26' West 371.12 feet along the West line of said 1.608 acre tract, to an iron rod found; thence South 89° 14' 46" West 179.49 feet along the North line of said 4.000 acre tract, to the point of beginning, containing 4.088 acres, more or less, as shown on Drawing No. D-3635, dated June 6, 2017, being subject to all legal easements of record.

SUBJECT TO: a 25.00 foot wide ingress and egress easement: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being a 25.00 foot wide ingress and egress easement, 12.50 feet lying on each side of the following described centerline:

commencing at a brass plug found at the Southeast Corner of said Quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 1,563.89 feet along the East line of said Quarter, in said highway, to the Southeast corner of a 4.000 acre tract, witness an iron rod set South 89° 46' 45" West 40.00 feet (all iron rods set are 5/8" rebar with plastic cap stamped "Beals-Moore RLS 20400025"); thence South 89° 46' 45" West 717.75 feet along the South line of said 4.000 acre tract; thence North 00° 36' 12" East 118.73 feet; thence North 38° 38' 29" West 26.70 feet; thence North 00° 27' 52" East 95.76 feet, to the North line of said 4.00 acre tract, being the point of beginning for the centerline of the easement herein described; thence north 00° 27' 52" east 345.46 feet along the centerline, to a point in the centerline of an existing 25.00 foot wide ingress and egress easement, as described in Instrument No. 20075210, being the terminus point of the easement herein described, side lines of said 25.00 foot wide easement to be extended or shortened to meet at angle points, as shown on Drawing No. D-3635, dated June 6, 2017, being subject to all legal easements of record.

ALSO EXCEPTING THEREFROM so much as was conveyed by Deed dated 8/7/2017, recorded 03/05/2018, in Instrument No. 20180630 from R & D Holdings, LLC, to Union City Indiana Properties LLC, and being further described as follows:

situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being more particularly described as follows:

commencing at a brass plug found at the Southeast corner, of said Quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 1,563.89 feet along the East line of said Quarter, in said Highway, the point of beginning of the tract herein described, witness an iron rod set South 89° 46' 45" West 40 00 feet (all iron rods set are 5/8" rebar with plastic cap stamped Beals-Moore RLS 20400025); thence South 89° 46' 45" West 765.45 feet, to an iron rod set; thence North 00° 27' 52" East 235.12 feet, to an iron rod set; thence North 89° 14' 46" East 369.19 feet along the South line of a 1.608 acre tract, as described in Instrument No. 20150385 and the extension thereof, to an iron rod found on the West line of a 3.495 acre tract, as described in Instrument No. 20151178; thence South 00° 26' 56" West 19.39 feet along said West line, to an iron rod found; thence North 89° 46' 45" East 396.04 feet along the South line of said 3.495 acre tract, to the East line of said Quarter, in said Highway, witness an iron rod found South 89° 46' 45" West 40.00 feet; thence South 00° 23' 39" West 219.16 feet along said East line, in said Highway to the point of beginning, containing 4.000 acres, more or less, as shown on Drawing No. D-3635, dated June 6, 2017, being subject to all legal easements of record.

SUBJECT TO: a 25.00 foot wide ingress and egress easement: situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Union City Township, Randolph County, Indiana, being part of a 26.801 acre tract, as described in Instrument No. 20073090, as recorded in the Randolph County Recorder's Office, being a 25.00 foot wide ingress and egress easement, 12.50 feet lying on each side of the following described centerline:

commencing at a brass plug found at the Southeast corner of said quarter, in Indiana State Highway No. 32; thence North 00° 23' 39" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 1,563.89 feet along the East line of said Quarter, in said Highway, to the Southeast corner of a 4.000 acre tract, witness an iron rod set South 89° 46' 45" West 40.00 feet (all iron rods set are 5/8" rebar with plastic cap stamped "Beals-Moore RLS 20400025"); thence South 89° 46' 45" West 717.75 feet along the South line of said 4.000 acre tract, to the point of beginning for the centerline of the easement herein described; thence North 00° 36' 12" East 118.73 feet along said centerline; thence North 38° 38' 29" West 26.70 feet along said centerline; thence North 00° 27' 52" East 95.76 feet along said centerline, to the North line of said 4.000 acre tract, being the terminus point of the easement herein described, side lines of said 25.00 foot wide easement to be extended or shortened to meet at angle points, as shown on Drawing No. D-3635, dated June 6, 2017, being subject to all legal easements of record.

State Parcel Number: 68-02-35-102-004.000-019

Location Address: 301 S. Jackson Pike, Union City, IN 47390

Parcel VI:

The following real estate in Randolph County, State of Indiana, described as follows, to-wit:

the North half of the following described tract; beginning at a point on the West line of the Southeast Quarter of Section 35, Township 18 North, Range 1 West, 660.75 feet north of the Southwest corner thereof. said point being the Southwest corner of the real estate of which Arend Abel, Jr., died seized; thence North along the West line of said Quarter section, 2027 feet to the Northwest corner thereof; thence East along the North line of said Southeast Quarter, 2648 feet to the Northeast corner thereof; thence South along the East line of said Quarter Section 2018 feet to the Southeast corner of the lands owned by said Abel at the time of his death; thence West along the South line of said lands; 2651 feet to the place of beginning, containing 123.016 acres, and containing in the North half thereof, 61.508 acres;

EXCEPTING THEREFROM the following described real estate: situated in the Southeast Quarter of Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana, and being a part of the 61.508 acre tract as described in Randolph County Deed Records Volume 222, page 221 and being more particularly described as follows; beginning at a brass plug over a stone at the Northeast corner of the Southeast Quarter of said Section 35; thence South 00° 00' 00" West 388.00 feet along the East line of said Southeast Quarter, said line also being the centerline of State Route No. 32 to a railroad spike; thence North 89° 02' 53" West 1229.59 feet to an iron pin; thence North 00° 00' 00" East 388.00 feet to an iron pin on the North line of said Southeast Quarter; thence South 89° 00' 53" East 1229.59 feet to the place of beginning, containing a total area of 10.951 acres, more or less, with 0.356 acres being State Route No. 32 right-of-way and a net area of 10.595 acres and being subject to all legal highways and easements of record;

EXCEPTING THEREFROM so much as was conveyed by Deed dated November 18, 2019, recorded November 21, 2019, in Instrument No. 20194510 from R & D Holdings, LLC to Magnolia Buckeye, LLC and being further described as follows: real estate in Randolph County, Indiana and more particularly described as follows, to wit:

Tract 1:

being a part of the Northeast Quarter of Section Thirty-Five (35), Township Eighteen (18) North, Range One (1) West, in Wayne Township, Randolph County, Indiana, more particularly described as follows: beginning at an iron rod found at the Southeast corner of the Northeast Quarter of Section 35; running thence, from said beginning point, North 89° 40' 45" West along the South line of said Northeast Quarter, 545.41 feet to an iron pipe set; thence North parallel to the East line of said Northeast Quarter, 519.14 feet to an iron pipe set; thence South 89° 40' 45" East parallel to the South line of said Northeast Quarter, 545.41 feet to a railroad spike set in the East line of said Northeast Quarter, thence South along said East line, 519.14 feet to the place of beginning, containing an area of 6.500 acres.

ALSO, a non-exclusive easement 40.0 foot in equal width for the purpose of ingress and egress to the above described tract, the center line being more particularly described as follows: commencing at the Southeast corner of the Northeast Quarter, and running thence North along the East line of said Northeast Quarter, 653.19 feet to the beginning point of this description; and running thence from said beginning point North 84° 40' 45" West parallel to the South line of said Northeast Quarter and along the centerline of said easement, 545.41 feet to the end of this easement description.

AND ALSO, a non-exclusive easement 25.00 feet in equal width for the purpose of ingress and egress to the above described tract, the center line being more particularly described as follows: commencing at the beginning of the above 40.00 foot wide easement; and running thence North 89° 40' 45" West along the center line of said easement and parallel to the South line of said Northeast Quarter, 225.00 feet to the beginning point of this easement description, and running thence from said beginning point South along the center line of said easement and parallel to the East line of said Northeast Quarter, 134.05 feet to a point on the North line of the above described tract and the end of this easement description and further a non-exclusive easement 35.00 foot in equal width for purpose of ingress and egress to the above described tract, the center line being more particularly described as follows: commencing at the beginning point of the above 40.00 foot wide easement, and running thence North 89° 40' 45" West along the centerline of said easement and parallel to the South line of said Northeast Quarter, 385 feet to the beginning point of this easement description; and running thence from said beginning point, South along the center line of said easement and parallel to the east line of said Northeast Quarter, 134.05 feet to a point on the North line of the above described tract and the end of this easement description.

Tract 2:

Being part of the Northeast Quarter of Section Thirty-Five (35), Township Eighteen (18) North, Range One (1) West, in Wayne Township, Randolph County, Indiana, more particularly described as follows: beginning at an iron pipe in the South line of the Northeast Quarter of said Section 35, said point being 545.41 feet, North 89° 40' 45" West, of an iron rod found at the Southeast corner of said Northeast Quarter; and running thence from said beginning point North 89° 40' 45" West along said South line, 134.25 feet to an iron rod set; thence North parallel to the East line of said Northeast Quarter, 519.14 feet to an iron rod set; thence South 89° 40' 45" East parallel to the South line of said Northeast Quarter, 134.25 feet to an iron pipe; thence South parallel to the East line of said Northeast Quarter, 519.14 feet to the place of beginning, containing 1.600 acres.

Tract 3:

Situated in the Southeast Quarter, Section 35, Township 18 North, Range 1 West, City of Union City, Wayne Township, Randolph County, Indiana, being part of a 50.557 acre tract, as depicted in Instrument 20017509, as recorded in the Randolph County Recorder's Office, being more particularly described as follows: commencing at a brass plug found at the Northeast corner of said Southeast Quarter, in Indiana State Highway No. 32; thence South 00° 14' 15" East (bearings are based upon GPS coordinates, projection set: USA/NAD 83/Indiana East) 448.01 feet along the East line of said Southeast Quarter, in said Highway, to the point of beginning for the tract herein described, witness an iron rod set North 89° 17' 18" West 40.00 feet (all iron rods set are 5/8 inch rebar with plastic cap stamped Beals-Moore RLS 20400025) thence South 00° 14' 15" East 560.99 feet along said East line, in said Highway, to the Southeast corner of said 50.557 acre tract, witness an iron rod set North 89° 22' 39" West 40.00 feet, thence North 89° 22' 39" West 782.66 feet along the South line of said 50.557 acre tract, to an iron rod set; thence North 01° 05' 13" East, 562.14 feet, to an iron rod set on the South line of Progress Drive, as described in Instrument 20191018; thence South 89° 17' 18" East 769.68 feet along the South line of Progress Drive, to the point of beginning, containing 10.005 acres, more or less.

ALSO EXCEPTING THEREFROM so much as was conveyed by Deed dated July 10, 2019, recorded July 16, 2019, in Instrument No. 20192507 from R & D Holdings, LLC to Union Tube Mill, LLC and being further described as follows:

the following real estate in Randolph County, State of Indiana and more particularly described as: situated in the Southeast Quarter of Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana, and being part of 61.508 acre tract, as described in Deed 20040225, and being more particularly described as follows:

commencing at an iron pin at the Northwest corner of the Southeast Quarter of said Section 35, thence South 00° 10' 21" East 43.19 feet, along the West line of said Southeast Quarter, to an iron pin, said iron pin being the true point of beginning for tract described herein; thence South 89° 16' 36" East 1066.94 feet to an iron pin; thence South 00° 10' 21" East 344.80 feet to an iron pin; thence North 89° 16' 36" West 289.94 feet to an iron pin; thence South 00° 10' 21" East 87.20 feet to an iron pin; thence North 89° 16' 36" West 777.00 feet to an iron pin on West line of said Southeast Quarter; thence North 00° 10' 21" West 432.00 feet, to the point of beginning, containing 10.000 acres, more or less.

ALSO EXCEPTING THEREFROM so much as was dedicated by Resolution 2019-R-02 Dedication of Public Right-of-Way recorded April 15, 2019, in Instrument No. 20191018 from R & D Holdings, LLC to the City of Union City, Indiana, described as follows:

situated in the Southeast Quarter of Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana and being a part of 61.508 acre tract, as described in Deed 20040225, and being more particularly described as follows:

commencing at Northeast corner of Southeast Quarter of said Section 35; thence South 00° 13' 57" East 388.00 feet, along East line of said Southeast Quarter, to a point, said point being the Southeast corner of a 10.591 acre tract as described in Deed 0005423 and being the true point of beginning for tract described herein; thence continuing South 00° 13' 57" East 60.01 feet to a point; thence North 89° 16' 36" West, passing a witness iron pin on West right-of-way line of State Highway No. 32 at 40.00 feet, and a total distance of 1873.32 feet to an iron pin; thence North 00° 10' 21" West 60.01 feet, along East line of a 7.705 acre tract, to an iron pin on; thence South 89° 16' 36" East 1873.26 feet, passing along South side of said 10.591 acre tract, to point of beginning containing 2.580 acres, more or less, and being subject to all highways and easements of record.

State Parcel Numbers:	68-02-35-401-002.002-019 68-02-35-401-002.004-019
Location Address:	1274 S. State Rd., 32, Union City, IN 47390

EXHIBIT "A-2"

Description of Warehouse Property

Parcel I:

The land referred to herein below is situated in the City of Union City, County of Randolph, State of Indiana, and is described as follows:

Situated in the Northeast Quarter, Section 35, Township 18 North, Range 1 West, Wayne Township, Randolph County, Indiana, being a part of a 127.003 acre tract as described in Instrument 20055506, as recorded in the Randolph County Recorder's Office, being more particularly described as follows: Commencing at an iron rod found at the Southeast corner of said Quarter, in Indiana State Highway No. 32; thence North 00 degrees 00 minutes 00 seconds East 673.19 feet along the east line of said Quarter, in said road, to a mag nail found at the point of beginning for the Tract herein described; thence North 89 degrees 40 minutes 45 seconds West 1850.80 feet along the South line of said 127.003 acre tract and being the North line of a 46.815 acre tract as described in Instrument 20054036, to an iron rod found; thence for the following 4 calls along the Southerly lines of said 127.003 acre tract and the Northerly lines of said 46.815 acre tract; thence North 00 degrees 20 minutes 45 seconds West 103.76 feet to an iron rod found; thence North 89 degrees 40 minutes 45 seconds West 114.58 feet to an iron rod found; thence North 00 degrees 00 minutes 00 seconds east 263.00 feet to an iron rod found; thence North 89 degrees 40 minutes 45 seconds West 110.02 feet to an iron rod set (all iron rods set are 5/8" rebar with plastic cap stamped RLS 20400025"); thence North 00 degrees 20 minutes 45 seconds West 982.99 feet, to an iron rod found on the south line of the Penn-Central Railroad; thence North 76 degrees 27 minutes 55 seconds East 903.17 feet along the South line of said Railroad, to an iron rod set on the Corporation line of the City of Union City; thence South 00 degrees 00 minutes 00 second West 920.21 feet along said Corporation line, to an iron rod set; thence North 90 degrees 00 minutes 00 seconds East 1203.84 feet along said Corporation line, to a mag nail set on the East line of said Quarter, in Indiana Highway No. 32, witness an iron rod set South 90 degrees 00 minutes 00 seconds West 40.00 feet, thence South 00 degrees 00 minutes 00 seconds West 652.51 feet along said East line, in said road, to the point of beginning, containing 46.010 acres, more or less.

FOR INFORMATION: APN: 68-02-35-105-003.000-019; 017-02061-00

EXHIBIT “B-1”

DEED

(Attached)

LIMITED WARRANTY DEED

THIS INDENTURE WITNESSETH, that **WORKHORSE MOTOR WORKS INC.**, an Indiana corporation (“**Grantor**”), GRANTS and CONVEYS to **MANGO WORKHORSE, LLC**, a Florida limited liability company (“**Grantee**”), for the sum of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, certain real property located in Randolph County, Indiana, which real property is more particularly described on **Exhibit A**, attached hereto and incorporated herein by reference (the “**Property**”).

This conveyance is subject to: (a) easements, restrictions, and covenants of record; (b) all matters that would be disclosed by an accurate survey or physical inspection of the Property; (c) the lien of nondelinquent real estate taxes, general and special assessments; (d) legal highways and rights of way; and (e) all zoning, building and other governmental restrictions and regulations (“**Permitted Exceptions**”).

Grantor, as its sole and limited warranty herein, specially covenants that the Property is free of any encumbrance made or suffered by Grantor except as set forth herein and that Grantor shall warrant and defend the same to Grantee, subject to the Permitted Exceptions, forever against the claims and demands of all persons claiming by, through or under Grantor, but against none other, subject to the Permitted Exceptions.

The undersigned person executing this Limited Warranty Deed on behalf of Grantor represents and certifies that he has been fully empowered and duly authorized by all necessary action to execute and deliver this Limited Warranty Deed; that Grantor has full capacity to convey the Property; and that all necessary action for the making of such conveyance has been taken or done.

The address of Real Estate: 940 S State Road 32, Union City, IN 47390.

The Grantee’s mailing address and the address to which tax statements should be mailed under Indiana Code 6-1.1-22-8.1 is:

After recording return to:

IN WITNESS WHEREOF, Grantor has executed this Limited Warranty Deed to be effective as of the day of August, 2025.

GRANTOR:

WORKHORSE MOTOR WORKS INC.,
an Indiana corporation

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

Before me, a Notary Public in and for the County and State referenced above, personally appeared _____, the _____ of Workhorse Motor Works Inc., an Indiana corporation, who, having been first duly sworn, acknowledged the execution of the foregoing Limited Warranty Deed on behalf of said corporation and stated that the representations contained herein are true.

Witness my hand and Notarial Seal this _____ day of August, 2025.

[SEAL] Notary Public

Printed: _____

I am a resident of _____ County, _____.

My commission expires: _____.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John C. Krug, Esq.

This instrument was prepared by John C. Krug, Esq., Frost Brown Todd LLP, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202.

Exhibit A

DESCRIPTION OF PROPERTY

[OMITTED]

EXHIBIT “B-2”

LEASE

(Omitted)

EXHIBIT "B-3"

MEMORANDUM OF LEASE

This instrument was prepared by

MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is made and entered into as of August ____, 2025 by and between **MANGO WORKHORSE, LLC**, a Florida limited liability company ("Lessor") whose mailing address is **WORKHORSE GROUP INC.**, a Nevada corporation ("Lessee") whose mailing address 3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241 Attn: General Counsel, who agree as follows:

1. The name of the lessor is **MANGO WORKHORSE, LLC**, a Florida limited liability company.
2. The name of the lessee is **WORKHORSE GROUP INC.**, a Nevada corporation.
3. Lessor and Lessee have entered into a certain lease dated August ____, 2025, as the same may be amended from time to time (the "Lease"), for that certain real property lying, being and situated in the County of Randolph, City of Union City, State of Indiana, more particularly described on Exhibit "A" attached hereto and incorporated hereby, together with the buildings, improvements and appurtenances thereunto belonging (collectively, the "Premises"), commonly known as:

940 S State Road 32
Union City, IN 47390

for an initial term of twenty (20) years, commencing on _____ and expiring on _____. Tenant has six (6), five (5) year options to extend the term of the Lease, as more particularly set forth in the Lease.

4. Notice is hereby given that Lessor shall not be liable for any labor, services or materials furnished or to be furnished to Lessee, or to anyone holding any of the Premises through or under Lessee, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Lessor in and to any of the Premises.
5. This Memorandum is prepared for the purpose of recordation and does not modify the provisions of the Lease. The Lease is incorporated herein by reference. If there are any conflicts between the Lease and this Memorandum, the provisions of the Lease shall prevail.

[Signatures Appear on Following Pages]

LESSOR:

MANGO WORKHORSE, LLC,
a Florida limited liability company

By: /s/ Chelsea Magness

Name: Chelsea Magness

Title: Authorized Person

STATE OF _____)
) SS:
COUNTY OF _____)

On _____ before me, appeared _____, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature (Seal)

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. John C. Krug, Esq.

This instrument was prepared by John C. Krug, Esq., Frost Brown Todd LLP, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202.

WORKHORSE GROUP INC.,
a Nevada corporation

By: _____
Name: _____
Title: _____

Before me, a Notary Public in and for the County and State referenced above, personally appeared _____, the _____ of Workhorse Group Inc., a Nevada corporation, who, having been first duly sworn, acknowledged the execution of the foregoing Memorandum of Lease on behalf of said corporation and stated that the representations contained herein are true.

Signature (Seal)

This instrument was prepared by John C. Krug, Esq., Frost Brown Todd LLP, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202.

EXHIBIT "A"

DESCRIPTION OF PREMISES

EXHIBIT "B-4"

ASSIGNMENT OF WARRANTIES, APPROVALS AND INTANGIBLES

ASSIGNMENT OF WARRANTIES, APPROVALS AND INTANGIBLES (this "Assignment") made as of the ____ day of August, 2025 by and between **WORKHORSE MOTOR WORKS INC.**, an Indiana corporation ("Assignor"), and **MANGO WORKHORSE, LLC**, a Florida limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Assignor has simultaneously herewith conveyed to Assignee all of Assignor's right, title and interest in and to the property located in the City of Union City, County of Randolph and State of Indiana consisting of approximately 92.60 acres of land in the aggregate, and more particularly described on Exhibit "A" attached to the Purchase Agreement (the "Property"), and in connection therewith, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in and to Warranties, Intangibles and Approvals, as such items are defined in that certain Purchase and Sale Agreement, dated as of August ____, 2025 by and between Assignor and Assignee (said items being collectively referred to below as the "Subject Rights")

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns to Assignee, all of Assignor's right, title and interest, if any, in and to the Subject Rights. The execution of this Assignment shall not be deemed to constitute a representation or warranty by Assignor that Assignor has the right to transfer any right, title or interest in any of the Subject Rights or that Assignee shall be entitled to receive the benefit of any of such Subject Rights;

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns from and after the date hereof.

2. This Assignment shall be binding on Assignor and its successors, assigns and legal representatives and shall inure to the benefit of the Assignee and its successors, assigns and legal representatives.

3. If more than one entity comprising Assignor is executing this Assignment, this Assignment may be executed in separate counterparts, which, together, shall constitute one and the same fully executed Assignment, and the entities comprising Assignor shall be jointly and severally liable for the obligations and liabilities of Assignor hereunder.

4. Assignor covenants to execute and deliver to Assignee any and all documents and to perform any and all acts necessary or appropriate to further effectuate the assignment described herein.

5. This Assignment may be executed and delivered by PDF, e-mail or facsimile transmission, and when so executed and delivered shall be deemed an original for all purposes.

IN WITNESS WHEREOF, this Assignment has been duly executed as of the date first above written.

ASSIGNOR:

WORKHORSE MOTOR WORKS INC.,
an Indiana corporation

By: _____
Name:
Title:

SCHEDULE 1

Initial Property Information

The following documents and information, if any, and to the extent in Seller's possession or control or maintained by Seller:

1. Title commitment issued to Seller with respect to the Property
 2. ALTA survey of the Property
 3. Any existing third-party inspection reports or studies, including a recent Phase I and Phase II Environmental Site Assessment of the Property, or other environmental and/or engineer studies
 4. Property condition assessment of the Improvements
 5. Zoning Report concerning the Property
 6. Copies of planning and zoning approvals for current use and Improvements, including site plan approvals, variances and conditional use permits
 7. Copies of certificate(s) of occupancy, permits, licenses, and other certificates issued for the Buildings and Property
 8. Building plans and specifications and drawings and property surveys, including issued-for-construction and as-built plans
 9. Copies of all insurance policies affecting the Property, including current insurance certificates for the Property for property and CGL coverage
 10. Notices of any outstanding code violations (threatened, pending, current and outstanding)
 11. Warranties and guarantees in effect with respect to any of the Improvements (roof, HVAC, elevator, boiler, etc.)
 12. Correspondence and notices from any third parties (including, without limitation, governmental agencies) asserting violations of law, adverse conditions of the Property or regarding any pending or threatened disputes relating to the Property (to the extent any of the foregoing have not been cured or resolved)
 13. Financial schedule of all operating expenses related to the Property for the last three years
 14. Maintenance logs for mechanical, electrical and fire suppression equipment
 15. Copies of all third-party contracts, including utility contracts, service contracts and other agreements currently in effect relating to the maintenance, use, or operation of the Property
-

SCHEDULE 2

Existing Insurance Policies

1. Synergy Coalition – Cyber Liability Policy – dated 7/22/2025
 2. RTHiscox – Crime Policy – dated 7/22/2025
 3. Encova – Umbrella Liability Policy (Stables & Stall) – dated 7/22/2025
 4. Encova – Package Policy (Stables & Stall) – dated 7/22/2025
 5. AmWinsColony – Garage Liability Policy – dated 7/22/2025
 6. Accident Fund – Worker’s Compensation Policy – dated 7/22/2025
 7. Certificate of Liability Insurance dated 7/17/2025 from Cincinnati/Assured Partners NL
 8. Evidence of Property Insurance dated 6/27/2025 from Cincinnati/Assured Partners NL
 9. Evidence of Property Insurance dated 1/5/2024 from Cincinnati/Assured Partners NL
 10. Certificate of Liability Insurance dated 1/5/2024 from Cincinnati/Assured Partners NL
-

SCHEDULE 3

Contracts

1. Miami Industrial Trucks – Invoice #22052587 – Workhorse Group – dated 6/23/2025
 2. Miami Industrial Trucks – Invoice #22052588 – Workhorse Group – dated 6/23/2025
 3. Miami Industrial Trucks – Invoice #22052589 – Workhorse Group – dated 6/23/2025
 4. Cornerstone Environmental, Health and Safety, Inc. – Consulting Services Proposal – Purchase Order P2000365 – Workhorse UC Assembly – dated 8/24/2023
 5. Cornerstone Environmental, Health and Safety, Inc. – Consulting Services Proposal –Workhorse Group Inc. – dated 2/6/2024
 6. Cornerstone Environmental, Health and Safety, Inc. – Consulting Services Proposal Stack Test Coordination and Oversight Service – Workhorse Group Inc. – dated 3/26/2024
 7. Cornerstone Environmental, Health and Safety, Inc. – Annual Services Proposal –Workhorse Group Inc. – dated 2/14/2024
 8. Cornerstone Environmental, Health and Safety, Inc. – Annual Services Proposal –Workhorse Group Inc. – dated 2/16/2024
 9. Cintas Corporation – Rental Service Agreement – Workhorse Group – dated 6/15/2022
 10. Johnson Controls Security Solutions LLC – Plant Building – Commercial Sales Agreement – Workhorse Factory – dated 5/30/2019
 11. Johnson Controls Security Solutions LLC – R&D Building – Commercial Sales Agreement – Workhorse Factory – dated 5/30/2019
 12. Spectrum Enterprise – Service Order – Workhorse Group Inc. – Order #12889106 – dated 11/15/2021
 13. Spectrum Enterprise – Service Order – Workhorse Group Inc. – Order #147345449 – dated 4/18/2025
 14. Kisi – 2025 Renewal Quote dated 3/12/2025 – Workhorse Group Inc.
 15. AVI Foodsystems, Inc. – Master Services Agreement – Workhorse Technologies Inc. – dated 4/6/2023
 16. AVI Foodsystems, Inc. – Statement for Work #1 – Workhorse Technologies Inc. – dated 4/6/2023
 17. AVI Foodsystems, Inc. – Amendment No. 1 – Workhorse Technologies Inc. – dated 5/25/2023
-

SCHEDULE 4

Permits

1. Indiana Department of Environmental Management – Paint Booth Air Permit – dated 2/22/2023
 2. Indiana Department of Environmental Management – Paint Booth Air Permit – dated 6/13/2023
-

SCHEDULE 5

Plans

1. Plant Blueprint – Design & Build Corporation – 1/22/1999
 2. Campus Blueprint – No date
 3. Campus Blueprint - Design & Build Corporation – 2/23/1999
 4. Campus Blueprint - Design & Build Corporation – 2/23/1999
 5. Campus Blueprint - Design & Build Corporation – 2/23/1999
 6. Campus Blueprint - Design & Build Corporation – 2/23/1999
 7. Campus Blueprint – Plat of Survey and Location of Improvements – 4/29/1997
 8. New Dyno – 11/29/2022
 9. New Road Layout Blueprint – Loop Road Concept – 10/13/2022
 10. Ranch Blueprints - A.2.1 Overall View of Ranch Walls
 11. Ranch Blueprints – A2.2 North Side of Ranch Paint Notes
 12. Ranch Blueprints – A.2 North Side of Ranch Walls
 13. Ranch Blueprints – A2.3 South Side of Ranch Paint Notes
 14. Ranch Blueprints – A2.3 South Side of Ranch Walls
 15. Ranch Blueprints – A2.4 All Restrooms in Ranch
 16. Ranch Blueprints – A3.1 Exterior Walls of Ranch
 17. Ranch Blueprints – A5.1 Ranch Door & Windows
 18. Ranch Blueprints – E1.1 North Side of Ranch Electrical
 19. Ranch Blueprints – E1.2 South Side of Ranch Electrical
 20. Ranch Blueprints – L1.1 South Side of Ranch Lights
 21. Ranch Blueprints – L1.2 South Side of Ranch Lights
 22. Ranch Blueprints – M1.1 North Side of Ranch HVAC
 23. Ranch Blueprints – M1.2 South Side of Ranch HVAC
 24. Ranch Blueprints – P1.1 North Side of Ranch Plumbing
 25. Ranch Blueprints – P1.2 South Side of Ranch Plumbing
 26. Ranch Blueprints – S1.1 Overall View of Ranch Foundation
 27. Ranch Blueprints – SP1.1 Campus Overall View
 28. Ranch Blueprints – SP1.2 Ranch Main Connections
 29. Ranch Blueprints – Test Track Sign Off
-

SCHEDULE 6

Warranties

None.

SCHEDULE 7

Leases

1. Sublease Agreement dated as of November 15, 2021, by and between Indiana Avenue Holdings, LLC, a Minnesota limited liability company and Workhorse Group, Inc.
-

Exhibits and Schedules:

Exhibit A-1 Description of Land
Exhibit A-2 Description of Warehouse Property
Exhibit B-1 Deed
Exhibit B-2 Lease
Exhibit B-3 Memorandum of Lease
Exhibit B-4 Assignment of Warranties, Approvals and Intangibles
Schedule 1 Initial Property Information
Schedule 2 Existing Insurance Policies
Schedule 3 Contracts
Schedule 4 Permits
Schedule 5 Plans
Schedule 6 Warranties
Schedule 7 Leases

WAIVER, REPAYMENT AND EXCHANGE AGREEMENT

This Waiver, Repayment and Exchange Agreement (the “**Agreement**”) is entered into as of the date set forth on the signature pages below, by and among Workhorse Group Inc., a Nevada corporation (the “**Company**”), and the investor signatory hereto (the “**Holder**”), with reference to the following facts:

A. On July 20, 2023, the Company filed a registration statement on Form S-3 on July 20, 2023 (File Number 333-273357) (the “**Registration Statement**”) with the Securities and Exchange Commission (the “**SEC**”) pursuant to Rule 415 under the Securities Act of 1933, as amended (the “**Securities Act**”) and the Registration Statement has been declared effective by the SEC on July 28, 2023.

B. The Company has heretofore executed and delivered to the Trustee an Indenture, dated as of December 27, 2023, substantially in the form filed as an exhibit to the Registration Statement (the “**Base Indenture**”), the Supplemental Indenture, dated as of December 27, 2023 (the “**First Supplemental Indenture**”), the Second Supplemental Indenture, dated as of March 15, 2024 (the “**Second Supplemental Indenture**”), the Third Supplemental Indenture, dated as of May 10, 2024 (the “**Third Supplemental Indenture**”), the Fourth Supplemental Indenture, dated as of May 29, 2024 (the “**Fourth Supplemental Indenture**”), the Fifth Supplemental Indenture, dated as of July 18, 2024 (the “**Fifth Supplemental Indenture**”), the Sixth Supplemental Indenture, dated as of August 23, 2024 (the “**Sixth Supplemental Indenture**”), the Seventh Supplemental Indenture, dated as of September 30, 2024 (the “**Seventh Supplemental Indenture**”), the Eighth Supplemental Indenture, dated as of October 16, 2024 (the “**Eighth Supplemental Indenture**”), the Ninth Supplemental Indenture, dated as of November 27, 2024 (the “**Ninth Supplemental Indenture**”), the Tenth Supplemental Indenture, dated as of December 16, 2024 (the “**Tenth Supplemental Indenture**”), the Eleventh Supplemental Indenture, dated as of January 27, 2025 (the “**Eleventh Supplemental Indenture**”) and the Twelfth Supplemental Indenture, dated as of February 12, 2025 (the “**Twelfth Supplemental Indenture**”), and collectively with the Base Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the Third Supplemental Indenture, the Fourth Supplemental Indenture, the Fifth Supplemental Indenture, the Sixth Supplemental Indenture, the Seventh Supplemental Indenture, the Eighth Supplemental Indenture, the Ninth Supplemental Indenture, the Tenth Supplemental Indenture and the Eleventh Supplemental Indenture, the “**Indenture**”), providing for the issuance from time to time of certain Senior Secured Convertible Notes (collectively, the “**Notes**”) by the Company.

C. Prior to the date hereof, pursuant to that certain Securities Purchase Agreement, dated as of March 15, 2024, (as amended, supplemented or otherwise modified from time to time, the “**Securities Purchase Agreement**”) and the Indenture, the Company has issued to the Holder (s) such aggregate principal amount of Notes (the “**Holder Notes**”) as set forth on the signature page of the Holder attached hereto (the “**Holder Note Outstanding Principal Amount**”), and the aggregate amounts outstanding under the Holder Notes, as set forth on the signature page of the Holder attached hereto, the “**Holder Note Outstanding Amount**”) and certain warrants to purchase Common Stock (as defined in the Securities Purchase Agreement) (the “**Holder Warrants**”). Capitalized terms not defined herein shall have the meaning as set forth in the Securities Purchase Agreement.

D. Prior to the date hereof, pursuant to the terms of the Transaction Documents, the Company and the Collateral Agent, for the benefit of the Holder, entered into a deposit account control agreement (the “**Lockbox DACA**”), in form and substance satisfactory to the Company and the Collateral Agent, with respect to Account Number: 5022086237 (the “**Lockbox Account**”) with JP Morgan Chase & Co (including any successor thereto approved by the Collateral Agent, in its sole discretion, the “**Lockbox Bank**”), which Lockbox Account is subject to the restriction that no Cash deposited into such Lockbox Account shall be released by the Lockbox Bank to the Company (or at the direction of the Company) without the written signature of the Collateral Agent and which as of the date hereof (and prior to the Cash Collateralization) holds \$[●].

E. The Company has entered into that certain merger agreement, dated as of the date hereof, by and among the Company, Omaha Merger Subsidiary, Inc., a Delaware corporation (“**Merger Sub**”), Omaha Intermediate, Inc., a Delaware corporation (“**Omaha Inter 1**”), Omaha Intermediate 2, Inc., a Delaware corporation (“**Omaha Inter 2**,” together with Merger Sub and Omaha Inter I, collectively, the “**Joining Entities**”), and Motiv Power Systems Inc. (the “**Merger Agreement**”, and the merger contemplated therein, the “**Merger**”).

F. The Company and the Holder desire that (a) on the date hereof, the Company shall deposit (the “**Cash Collateralization**”) \$[●] (the “**Cash Collateralization Amount**”) into the Lockbox Account which may be applied against all, or any part, of the Conversion Amount (as defined in the Holder Notes) of the Holder Notes as requested in writing by the Holder and the Collateral Agent (each, a “**Lockbox Account Release Notice**”, and the date thereof, each a “**Lockbox Account Release Notice Date**”), (b) on the Closing Date (as defined in the Merger Agreement)(the “**Merger Closing Date**”), the Company shall redeem (the “**Cash Repayment**”) the Holder Notes at a redemption price equal to 100% of the Conversion Amount of the Holder Notes then outstanding (which, as of the date hereof, is equal to \$[●], subject to increase for Interest (including Reduced Interest (as defined below), as applicable) on the Holder Notes prior to the Merger Closing Date and decrease with respect to any conversion of the Holder Notes (or redemption of all, or any part, of the Holder Notes with all, or any part, of the Cash Collateralization Amount, as applicable), in each case, prior to the Merger Closing Date)(the “**Final Cash Paydown Amount**”), (c) the Holder waives (the “**Interest Waiver**”), in part, the Holder Notes, solely to effect a reduction of the Interest Rate (as defined in the Holder Notes) (such interest, the “**Reduced Interest**”) of such portion of the Holder Notes with an aggregate principal amount equal to the Cash Collateralization Amount to 5% per annum with respect to any day in which such corresponding Cash Collateralization Amount remains in the Lockbox Account and (d) on the Merger Closing Date, immediately prior to the closing of the Merger, exchange (the “**Exchange**”) the Holder Warrants for rights to receive, subject to the terms and conditions set forth herein, from time to time (the “**Rights**”), an amount of shares of Common Stock equal to [●]% of the fully-diluted shares of Common Stock outstanding as of the time of issuance of the Rights hereunder (determined, for the avoidance of doubt, prior to giving effect to the issuance of any shares of Common Stocks upon closing of the Merger) (the “**Rights Shares**”, and together with the Rights, the “**Securities**”) in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the “**Securities Act**”), and Rule 144(d)(3)(ii) of the Securities Act. All such determinations, per share price and share amounts to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock prior to the time of issuance of the Rights hereunder.

G. Each of the Company and the Holder desire to effectuate the Cash Collateralization, the Interest Waiver, the Cash Repayment and the Exchange (collectively, the “**Exchange Transactions**”) on the basis and subject to the terms and conditions set forth in this Agreement.

H. The Exchange is being made in reliance upon the exemption from registration provided by Section 4(a)(2) and Rule 144(d)(3)(ii) of the Securities Act.

I. The Company may from time to time implement transactions identical, in all material respects, to the Exchange Transactions with respect to other Notes and Warrants of the Company (the “**Other Securities**”) that are currently outstanding and held by other investors (the “**Other Holders**”), as applicable, by entering into agreements (the “**Other Agreements**”) in the same form as this Agreement (other than proportional changes based upon the difference in aggregate amounts outstanding and number of Other Securities and the payment of legal expenses with respect hereto).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. Cash Collateralization; Interest Waiver; Cash Repayment; Exchange; Forbearance

(a) Cash Collateralization; Lockbox Account Release. On the date hereof, the Company shall deposit a cash amount equal to the Cash Collateralization Amount, in U.S. dollars of immediately available funds into the Lockbox Account. At any time after the date hereof and prior to the Merger Closing Date, the Holder may deliver to the Company one or more Lockbox Account Release Notice(s) (each including a direction by the Collateral Agent to the Lockbox Bank) to require the release, in whole or in part, the Cash Collateralization Amount (each, a “**Lockbox Account Release Amount**”). Each dollar of the Cash Collateralization Amount released to the Holder shall reduce the Conversion Amount of the Holder Notes then outstanding on a dollar-for-dollar basis as described in the Lockbox Account Release Notice. The Company shall cause the delivery of each Lockbox Account Release Amount, in U.S. dollars and immediately available funds, in accordance with the wire instructions of the Holder delivered to the Company in such applicable Lockbox Account Release Notice, by no later than the second (2nd) Business Day after any given Lockbox Account Release Notice Date (each, a “**Lockbox Account Release Deadline**”).

(b) Interest Waiver. On the Effective Date, the Holder hereby grants the Interest Waiver.

(c) Final Cash Repayment. On the Merger Closing Date, the Company shall pay the Holder a cash amount equal to the Final Cash Paydown Amount, in U.S. dollars and immediately available funds in accordance with the wire instructions of the Holder delivered to the Company on or prior to the Merger Closing Date in exchange for the cancellation of the Holder Notes as of the Merger Closing Date.

(d) Exchange of Warrants; Release Time. Immediately prior to the time of the closing of the Merger, pursuant to Section 4(a)(2) and Rule 144(d)(3)(ii) of the Securities Act, the Holder hereby agrees to convey, assign and transfer the Holder Warrants (the “**Exchanging Warrants**”) to the Company in exchange for which the Company agrees to issue the Rights to the Holder on the books and records of the Company (the “**Exchange**”). As soon as commercially practicable following the Merger Closing Date, the Holder shall deliver or cause to be delivered to the Company (or its assignee) the Holder Warrants (or affidavit of lost Warrant(s), as applicable, in form provided upon request by the Company and reasonably acceptable to the Holder). Immediately following the payment of the Final Cash Paydown Amount to the Holder, issuance of the Rights to the Holder on the books and records of the Company and delivery to the Holder by the Company of the Irrevocable Transfer Agent Instructions (as defined below) duly executed by the Company and acknowledged in writing by the Company’s transfer agent (the “**Release Time**”), the Holder hereby relinquishes all rights, title and interest in the Holder Notes and Holder Warrants (including any claims the Holder may have against the Company related thereto) and assigns the same to the Company and the Holder Notes and Holder Warrants shall be cancelled.

(d) Forbearance and Waiver. As of the Effective Date, the Holder hereby agrees not to request any Additional Closing pursuant to the Securities Purchase Agreement until the earlier to occur of (x) the Merger Closing Date and (y) the date of termination or abandonment, as applicable, of the Merger. Effective as of the Release Time, the Holder hereby irrevocably waives any right to effect any Additional Closings pursuant to the Securities Purchase Agreement. In addition, as of the Release Time, the Holder hereby waives on behalf of itself and the Collateral Agent (as defined in the Securities Purchase Agreement) any breach, default or Event of Default (as defined under the Notes) under the Transaction Documents solely caused by, or resulting from, the Company and its Subsidiaries entry into the Merger Agreement and the performance of the transactions contemplated thereby, including, without limitation, (i) the Convertible Financing (as defined under the Merger Agreement) and (ii) the Sale and Leaseback Transaction (as defined under the Merger Agreement), and the parties hereto shall perform under the Transaction Documents consistent with the transactions contemplated hereby.

(e) Collateral Matters. On or prior to the Effective Date, (I) each of the Joined Entities shall be joined to (i) the Security Agreement as a “Grantor” thereunder pursuant to a Security Agreement Supplement in form and substance substantially similar to Exhibit B to the Security Agreement and (ii) Subsidiary Guarantee as a “Guarantor” thereunder pursuant to an Assumption Agreement in form and substance substantially similar to Annex 1 to the Guarantee, (II) each of the Company, Omaha Inter 1 and Omaha Inter 1 shall execute a Pledge Amendment in form and substance substantially similar to Exhibit C to the Security Agreement granting a lien on the Pledged Stock of the applicable Joining Entities and (III) each of the Company and the Joined Entities shall execute and deliver any other agreements, instruments, documents or deliverables required pursuant to Section 15(o) of the Holder Notes (collectively, the “**Joining Entity Collateral Documents**”).

(f) Ancillary Documents: Merger Support.

(i) Transfer Agent Instructions. On or prior to the Release Time, the Company shall issue irrevocable instructions to its transfer agent and any subsequent transfer agent (as applicable, the “**Transfer Agent**”) in a form attached hereto as Exhibit A (the “**Irrevocable Transfer Agent Instructions**”) to issue certificates or credit shares to the applicable balance accounts at The Depository Trust Company (“**DTC**”), registered in the name of the Holder or its respective nominee(s), for the Rights Shares in such amounts as specified from time to time by the Holder to the Company upon exercise of the Rights.

(ii) Leak-Out Agreement. Concurrently herewith, the Holder shall duly execute and deliver to the Company the leak-out agreement in the form attached hereto as Exhibit B (the “**Leak-Out Agreement**”).

(iii) Merger Support. The Holder hereby agrees to vote any shares of Common Stock held by the Holder as of the record date for the transactions contemplated by the Merger in favor of the Merger at any meeting of the Company occurring after the date hereof and prior to the Merger Closing Date.

(g) Other Documents. The Company and the Holder shall execute and/or deliver such other documents and agreements as are customary and reasonably necessary to effectuate the Exchange Transactions.

2. Amendments

(a) Ratifications. Except as otherwise expressly provided herein, the Securities Purchase Agreement and each other Transaction Document (as defined in the Securities Purchase Agreement), is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Effective Date: (i) all references in the Securities Purchase Agreement to “this Agreement”, “hereto”, “hereof”, “hereunder” or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement, and (ii) all references in the other Transaction Documents, to the “Securities Purchase Agreement”, “thereto”, “thereof”, “thereunder” or words of like import referring to the Securities Purchase Agreement shall mean the Securities Purchase Agreement as amended by this Agreement. In the event of a conflict between this Agreement and the other Transaction Documents, this Agreement shall control.

(b) Amendments to Transaction Documents. On and after the Effective Date, each of the Transaction Documents (as defined in the Securities Purchase Agreement) are hereby amended as follows:

(i) The defined term “Warrant” is hereby amended to include the “Rights (as defined in each Amendment and Exchange Agreement)”.

(ii) The defined term “Warrant Shares” is hereby amended to include the “Rights Shares (as defined in each Amendment and Exchange Agreement)”.

(iii) The defined term “Amendment and Exchange Agreement” shall mean this Agreement and each Other Agreement.

(iv) The defined term “Transaction Documents” is hereby amended to include this Agreement and each Other Agreement.

(v) The defined term “Permitted Indebtedness” is hereby amended to include a new clause (vii) as follows: “the Omaha Indebtedness subject to the that certain Intercreditor Agreement executed by Motive GM Holdings II LLC and Horsepower Management LLC as agent dated as August 15, 2025 (the “**Omaha Intercreditor**”)”.

(vi) The defined term “Permitted Lien” is hereby amended to include a new clause (x) as follows: “Liens securing the Omaha Indebtedness to the extent permitted by the Omaha Intercreditor”.

(vii) A new defined term “Omaha Indebtedness” is hereby added as follows: ““**Omaha Indebtedness**” means the Indebtedness owing to Motive GM Holdings II LLC by Workhorse Group Inc. pursuant to that certain Subordinated Secured Convertible Note in the original principal amount of \$5,000,000 dated as August 15, 2025.”

3. Representations and Warranties of the Company.

(a) Organization and Qualification. Each of the Company and each of its Subsidiaries are entities duly organized and validly existing and in good standing under the laws of the jurisdiction in which they are formed, and have the requisite power and authority to own their properties and to carry on their business as now being conducted and as presently proposed to be conducted. Each of the Company and each of its Subsidiaries is duly qualified as a foreign entity to do business and is in good standing in every jurisdiction in which its ownership of property or the nature of the business conducted by it makes such qualification necessary, except to the extent that the failure to be so qualified or be in good standing would not reasonably be expected to have a Material Adverse Effect.

(b) Authorization and Binding Obligation. The Company has the requisite power and authority to enter into and perform its obligations under this Agreement, the Rights, each of the Joining Entity Collateral Documents., the Irrevocable Transfer Agent Instructions, the Leak-Out Agreement and each of the other agreements and certificates entered into by the parties hereto in connection with Exchange Transactions and the other the transactions contemplated by this Agreement (collectively, the “**Exchange Documents**”), to pay the Cash Repayments in accordance herewith and to issue the Rights in accordance with the terms hereof (and upon exercise of the Rights, the Rights Shares) and the reservation for issuance and issuance of the Rights Shares issuable upon exercise of the Rights. The execution and delivery of the Exchange Documents by the Company and the consummation by the Company of the Exchange Transactions and the other transactions contemplated hereby and thereby, including, without limitation, the issuance of the Rights (and upon exercise of the Rights, the Rights Shares) and the reservation for issuance and issuance of the Rights Shares issuable upon exercise of the Rights, have been duly authorized by the Board of Directors of the Company and, other than (i) notification filings with the Principal Market, and (ii) such filings required under applicable securities or “Blue Sky” laws of the states of the United States (the “**Required Approvals**”) and no further filing, consent, or authorization is required by the Company or of its Board of Directors or its shareholders, except as otherwise contemplated by the Merger Agreement. This Agreement and the other Exchange Documents have been duly executed and delivered by the Company and constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors’ rights and remedies.

(c) No Conflict; Required Filings and Consents.

(i) The execution, delivery and performance of the Exchange Documents by the Company and the consummation by the Company of the Exchange Transactions and the other transactions contemplated hereby and thereby will not (i) result in a violation of the certificate of incorporation of the Company (including, without limitation, any certificate of designation contained therein), bylaws of the Company, certificate of formation, memorandum of association, articles of association, bylaws or other organizational documents of the Company or any of its Subsidiaries, or any capital stock or other securities of the Company or any of its Subsidiaries, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its Subsidiaries is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including, without limitation, foreign, federal and state securities laws and regulations and the rules and regulations of the Principal Market and including all applicable foreign, federal and state laws, rules and regulations) applicable to the Company or any of its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected.

(ii) Neither the Company nor any Subsidiary is required to obtain any consent from, authorization or order of, or make any filing or registration with (other than the Required Approvals), any governmental entity or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its respective obligations under or contemplated by the Exchange Documents, in each case, in accordance with the terms hereof or thereof, except as otherwise contemplated by the Merger Agreement. All consents, authorizations, orders, filings and registrations which the Company or any Subsidiary is required to obtain pursuant to the preceding sentence have been or will be obtained or effected on or prior to the date hereof or prior to the Release Time, and neither the Company nor any of its Subsidiaries are aware of any facts or circumstances which might prevent the Company or any of its Subsidiaries from obtaining or effecting any of the registration, application or filings contemplated by the Exchange Documents.

(d) No Integration. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of any of Securities under the Securities Act or cause this offering of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated. None of the Company, its Subsidiaries, their affiliates or any Person acting on their behalf will take any action or steps referred to in the preceding sentence that would require registration of any of Securities under the Securities Act or cause the offering of the Securities to be integrated with other offerings.

(e) Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Holder contained herein, the offer and issuance by the Company of the Securities is exempt from registration under the Securities Act, pursuant to the exemption provided by Section 4(a)(2) and Rule 144(d)(3)(ii) thereof, and applicable state securities laws.

(f) Issuance of Rights. The issuance of the Rights by the Company is duly authorized and, and upon issuance in exchange for the Holder Warrants in accordance with the terms of the Exchange Documents, the Rights shall be validly issued, fully paid and non-assessable and free from all free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, rights, proxies, equity or other adverse claim thereto (collectively, “**Liens**”). Upon issuance in accordance herewith or pursuant to the Rights, as applicable, the Rights Shares, when issued, will be validly issued, fully paid and nonassessable and free from all Liens with respect to the issue thereof, with the holders being entitled to all rights accorded to a holder of Common Stock, shall be freely tradeable by the Holder and shall be issued without any restricted legend.

(g) Disclosure. The Company confirms that neither it nor any other Person acting on its behalf has provided the Holder or its agents or counsel with any information that constitutes or could reasonably be expected to constitute material, nonpublic information that will not be disclosed in the 8-K Filing (as defined below). The Company understands and confirms that the Holder will rely on the foregoing representations in effecting transactions in the Securities. All disclosure provided to the Holder regarding the Company and its Subsidiaries, their business and the transactions contemplated hereby, including the schedules to this Agreement, furnished by or on behalf of the Company is true and correct and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. No event or circumstance has occurred or information exists with respect to the Company or any of its Subsidiaries or its or their business, properties, prospects, operations or financial conditions, which, under applicable law, rule or regulation, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

4. **Representations and Warranties of Holders.** The Holder represents and warrants to the Company, as of the date hereof, as follows:

(a) **Organization and Authority.** The Holder has the requisite power and authority to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement by the Holder and the consummation by Holder of the transactions contemplated hereby has been duly authorized by Holder's board of directors or other governing body. This Agreement has been duly executed and delivered by Holder and constitutes the legal, valid and binding obligation of Holder, enforceable against Holder in accordance with its terms.

(b) **Ownership of Holder Notes and Holder Warrants.** The Holder owns the Holder Notes and Holder Warrants free and clear of any Liens (other than the obligations pursuant to this Agreement, the Transaction Documents and applicable securities laws). The Holder Notes and Holder Warrants constitute the only Notes and Warrants held by the Holder, and together with the Other Holder(s) entering into Other Agreements, constitute all of the issued and outstanding Notes and Warrants.

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

(d) **Validity; Enforcement.** This Agreement and the Exchange Documents to which the Holder is a party have been duly and validly authorized, executed and delivered on behalf of the Holder and shall constitute the legal, valid and binding obligations of the Holder enforceable against the Holder in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or to applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies.

(e) **No Conflicts.** The execution, delivery and performance by the Holder of this Agreement and the Exchange Documents to which the Holder is a party, and the consummation by the Holder of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of the Holder or (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Holder is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to the Holder, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Holder to perform its obligations hereunder.

(f) No Consideration Paid. No commission or other remuneration has been paid by the Holder for soliciting the exchange of the Holder Warrants for the Rights as contemplated hereby.

5. Disclosure of Transaction. The Company shall, on or before 9:30 a.m., New York City Time, on or prior to the first (1st) Business Day after the date of this Agreement, file a Current Report on Form 8-K describing the terms of the transactions contemplated hereby in the form required by the 1934 Act and attaching the Exchange Documents, to the extent they are required to be filed under the 1934 Act, that have not previously been filed with the SEC by the Company (including, without limitation, this Agreement and the Leak-Out Agreement) as exhibits to such filing (including all attachments, the “**8-K Filing**”). From and after the filing of the 8-K Filing, the Company shall have disclosed all material, non-public information (if any) provided up to such time to the Holder by the Company or any of its Subsidiaries or any of their respective officers, directors, employees or agents. In addition, effective upon the filing of the 8-K Filing, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement with respect to the transactions contemplated by the Exchange Documents or as otherwise disclosed in the 8-K Filing, whether written or oral, between the Company, any of its Subsidiaries or any of their respective officers, directors, affiliates, employees or agents, on the one hand, and any of the Holder or any of their affiliates, on the other hand, shall terminate. Neither the Company, its Subsidiaries nor the Holder shall issue any press releases or any other public statements with respect to the Exchange Transactions; *provided, however*, the Company shall be entitled, without the prior approval of the Holder, to make a press release or other public disclosure with respect to the Exchange Transactions (i) in substantial conformity with the 8-K Filing and contemporaneously therewith or (ii) as is required by applicable law and regulations (provided that in the case of clause (i) the Holder shall be consulted by the Company in connection with any such press release or other public disclosure prior to its release to the extent the Holder is named in such press release or disclosure). Without the prior written consent of the Holder (which may be granted or withheld in the Holder’s sole discretion), except as required by applicable law, the Company shall not (and shall cause each of its Subsidiaries and affiliates to not) disclose the name of the Holder in any filing, announcement, release or otherwise.

6. No Integration. None of the Company, its Subsidiaries, any of their affiliates, or any Person acting on their behalf shall, directly or indirectly, make any offers or sales of any security (as defined in the Securities Act) or solicit any offers to buy any security or take any other actions, under circumstances that would require registration of the Securities under the Securities Act or cause this offering of the Securities to be integrated with such offering or any prior offerings by the Company for purposes of Regulation D under the Securities Act.

7. Listing. The Company shall promptly secure the listing or designation for quotation (as applicable) of all of the Rights Shares upon the Nasdaq Capital Market (the “**Principal Market**”) (subject to official notice of issuance). The Company shall maintain the Common Stock’s authorization for quotation on the Principal Market. Neither the Company nor any of its Subsidiaries shall take any action which would be reasonably expected to result in the delisting or suspension of the Common Stock on the Principal Market. The Company shall pay all fees and expenses in connection with satisfying its obligations under this Section 7.

8. Fees. The Company shall reimburse Kelley Drye & Warren LLP and Blank Rome LLP, on demand, for all costs and expenses incurred by it in connection with preparing and delivering this Agreement (including, without limitation, all legal fees and disbursements in connection therewith, and due diligence in connection with the transactions contemplated thereby) in an aggregate non-accountable amount equal to \$[●] to Kelley Drye & Warren LLP and \$[] to Blank Rome LLP (collectively, the “**Legal Fee Amount**”).

9. **Blue Sky.** The Company shall make all filings and reports relating to the Exchange as required under applicable securities or “Blue Sky” laws of the states of the United States following the date hereof, if any.

10. **Effective Date.** Except as otherwise provided herein, this Agreement shall be deemed effective as of the later of (x) such date the Company shall have deposited the Cash Collateralization Amount into the Lockbox Account and the Legal Fee Amount to Kelley Drye & Warren LLP and Blank Rome LLP and (y) such date that Company and the Holder shall have duly executed and delivered this Agreement and each of the Joining Entity Collateral Documents (the “**Effective Date**”).

11. **Termination.** Notwithstanding anything contained in this Agreement to the contrary, if the Effective Date has not occurred at any time after the fifth (5th) Business Day immediately following the date of this Agreement, this Agreement shall be terminated and be null and void ab initio and no portion of the Holder Notes or the Holder Warrants shall be cancelled hereunder and the Holder Notes and the Holder Warrants shall remain outstanding as if this Agreement never existed. After the Effective Date, in the event the Merger Agreement is terminated in accordance with its terms and the transactions contemplated thereby are not consummated, Sections 1(c)-(g) above shall have no further force and effect and shall be null and void and the remaining outstanding amount of the Holder Notes shall not be cancelled hereunder and the Holder Notes and the Holder Warrants shall remain outstanding as if this Agreement never existed.

12. **Independent Nature of Holder’s Obligations and Rights.** The obligations of the Holder under this Agreement are several and not joint with the obligations of any Other Holder, and the Holder shall not be responsible in any way for the performance of the obligations of any Other Holder under any Other Agreement. Nothing contained herein or in any Other Agreement, and no action taken by the Holder pursuant hereto, shall be deemed to constitute the Holder and Other Holders as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that the Holder and Other Holders are in any way acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement and the Company acknowledges that, to the best of its knowledge, the Holder and the Other Holders are not acting in concert or as a group with respect to such obligations or the transactions contemplated by this Agreement or any Other Agreement. The Company and the Holder confirm that the Holder has independently participated in the negotiation of the transactions contemplated hereby with the advice of its own counsel and advisors. The Holder shall be entitled to independently protect and enforce its rights, including, without limitation, the rights arising out of this Agreement, and it shall not be necessary for any Other Holder to be joined as an additional party in any proceeding for such purpose.

13. **Rights to Issue Shares.**

13.1 **General.** In the Exchange, the Company shall issue the Holder the Rights to receive the Rights Shares, which Rights shall have such terms and conditions as set forth in this Section 13. The Company and the Holder hereby agree that no additional consideration is payable in connection with the issuance of the Rights or the exercise of the Rights.

13.2 **Exercise of Right of Issuance of Shares.** Subject to the terms hereof, the exercise of the Rights may be made, in whole or in part, at any time or times on or after the date hereof by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed PDF copy of the Notice of Issuance Form annexed hereto as **Exhibit A** (each, a “**Notice of Issuance**”, and the corresponding date thereof, the “**Exercise Date**”). Partial exercises of the Rights resulting in issuances of a portion of the total number of Rights Shares available thereunder shall have the effect of lowering the outstanding number of Rights Shares purchasable thereunder in an amount equal to the applicable number of Rights Shares issued. The Holder and the Company shall maintain records showing the number of Rights Shares issued and the date of such issuances. The Company shall deliver any objection to any Notice of Issuance Form within one (1) Trading Day of receipt of such notice. The Holder acknowledges and agrees that, by reason of the provisions of this paragraph, following each exercise of the Rights issued hereunder and the issuance of a portion of the Rights Shares pursuant thereto, the number of Rights Shares available for issuance pursuant to the Rights issued hereunder at any given time may be less than the amount stated in the recitals hereof.

13.3 Delivery of Rights Shares. The Rights Shares issued hereunder shall be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's prime broker with The Depository Trust Company through its Deposit/Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system (unless requested by the Holder to be delivered by physical delivery to the address specified by the Holder in the Notice of Issuance) by the date that is one (1) Trading Day after the delivery to the Company of the Notice of Issuance (such date, the "**Share Delivery Deadline**"). The Rights Shares shall be deemed to have been issued, and Holder or any other person so designated to be named therein shall be deemed to have become the holder of record of such shares for all purposes, as of the date the Rights have been exercised.

13.4 Charges, Taxes and Expenses. Issuance of Rights Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificate, all of which taxes and expenses shall be paid by the Company, and such certificates shall be issued in the name of the Holder. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Issuance.

13.5 Authorized Shares. The Company covenants that, from and after the date hereof, as long as any Rights remain outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of all of the Rights Shares issuable hereunder upon the exercise of the Rights (without regard to any limitations on exercise set forth in Section 13.8 below). The Company further covenants that its issuance of the Rights shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates for the Rights Shares upon the due exercise of the Rights. The Company will take all such reasonable action as may be necessary to assure that such Rights Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Principal Market upon which the Common Stock may be listed. The Company covenants that all Rights Shares which may be issued upon the exercise of the Rights represented by this Agreement, the Rights, will, upon exercise of the Rights be duly authorized, validly issued, fully paid and non-assessable and free from all taxes, Liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

13.6 Impairment. Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Agreement, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of the Holder as set forth in this Agreement against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Rights Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable Rights Shares upon the exercise of the Rights and (iii) use reasonable best efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Agreement.

13.7 Authorizations. Before taking any action which would result in an adjustment in the number of Rights Shares for which the Rights provides for, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

13.8 Limitations on Exercise. The Company shall not effect the exercise of any Rights, and the Holder shall not have the right to exercise any portion of any Rights pursuant to the terms and conditions of this Agreement and any such exercise shall be null and void and treated as if never made, to the extent that after giving effect to such exercise, the Holder together with the other Attribution Parties (as defined below) collectively would beneficially own in excess of 9.99% (the **"Beneficial Ownership Limitation"**) of the shares of Common Stock outstanding immediately after giving effect to such exercise. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon exercise of the Rights issued hereunder with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) exercise of the remaining, nonexercised portion of the Rights beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible Notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 13.8. For purposes of this Section 13.8 beneficial ownership shall be calculated in accordance with Section 13(d) of the Securities Exchange Act of 1934, as amended (the **"1934 Act"**). For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the exercise of the Rights without exceeding the Beneficial Ownership Limitation, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the **"Reported Outstanding Share Number"**). If the Company receives a Notice of Issuance from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Notice of Issuance would otherwise cause the Holder's beneficial ownership, as determined pursuant to this Section 13.8, to exceed the Beneficial Ownership Limitation, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Notice of Issuance. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Rights, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon exercise of the Rights results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Beneficial Ownership Limitation of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder's and the other Attribution Parties' aggregate beneficial ownership exceeds the Beneficial Ownership Limitation (the **"Excess Shares"**) shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Beneficial Ownership Limitation to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Beneficial Ownership Limitation will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Rights that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of the Rights hereunder in excess of the Beneficial Ownership Limitation shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to exercise any Rights pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 13.8 to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 13.8 or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of Rights. For the purpose of this Agreement: (x) **"Attribution Parties"** means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the date hereof, directly or indirectly managed or advised by the Holder's investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Beneficial Ownership Limitation, (y) **"Group"** means a "group" as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder and (z) **"Affiliate"** means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

13.9 Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of the Rights, pursuant to the terms hereof.

13.10 Stock Dividends and Splits. If the Company, at any time while the Rights exist: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the number of Rights Shares issuable upon exercise of the Rights shall be proportionately adjusted. Any adjustment made pursuant to this Section 13.10 shall become effective immediately upon the record date for the determination of stockholders entitled to receive such dividend or distribution (provided that if the declaration of such dividend or distribution is rescinded or otherwise cancelled, then such adjustment shall be reversed upon notice to the Holder of the termination of such proposed declaration or distribution as to any unexercised portion of the Rights at the time of such rescission or cancellation) and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

13.11 Compensation for Buy-In on Failure to Timely Deliver Rights Shares. If the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, either (x) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or, (y) if the Transfer Agent is participating in the DTC Fast Automated Securities Transfer Program, to credit the balance account of the Holder or the Holder's designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of a Right (a "**Delivery Failure**"), then, in addition to all other remedies available to such Holder, (X) the Company shall pay in cash to the Holder on each day after the Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the applicable Exercise Date and ending on the applicable Share Delivery Deadline, and (Y) the Holder, upon written notice to the Company, may void its Notice of Issuance with respect to, and retain or have returned, as the case may be, all, or any portion, of such Rights that has not been exercised pursuant to such Notice of Issuance; provided that the voiding of a Notice of Issuance shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 13.11 or otherwise. In addition to the foregoing, if a Delivery Failure occurs and if on or after such Share Delivery Deadline the Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such exercise that the Holder is entitled to receive from the Company and has not received from the Company in connection with such Delivery Failure (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within one (1) Business Day after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of Rights hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise of Rights hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price (as defined below) of the Common Stock on any Trading Day during the period commencing on the date of the applicable Notice of Issuance and ending on the date of such issuance and payment under this clause (II). Nothing shall limit the 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 certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the exercise of the Rights as required pursuant to the terms hereof. "Closing Bid Price" and "Closing Sale Price" means, for any security as of any date, the last bid price or last trade price, respectively, of such security prior to 6:00:00 p.m., New York time, as reported by Bloomberg, L.P., or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, L.P., or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, L.P., or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, L.P., the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

13.12 Subsequent Rights Offerings. Except with respect to any adjustments pursuant to Section 13.10 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 exercise of the Rights (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, 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).

13.13 Fundamental Transaction. If, at any time while the Rights remain outstanding, a Fundamental Transaction (as defined in the Warrants) occurs, then, upon any subsequent exercise of the Rights, the Holder shall have the right to receive, for each Rights Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 13.8 on the exercise of the Rights), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration receivable as a result of such Fundamental Transaction by a Holder of one share of Common Stock. Upon the occurrence of any such Fundamental Transaction, the any successor entity in a Fundamental Transaction in which the Company is not the survivor (the “**Successor Entity**”) shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Agreement referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Agreement with the same effect as if such Successor Entity had been named as the Company herein.

13.14 No Rights as Stockholder Until Exercise. Each Right does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof.

13.15 Transferability. Subject to compliance with any applicable securities laws, the Rights and all rights hereunder are transferable to any affiliate of the Holder or any other Person under common control with the Holder, as applicable, in whole or in part, upon written assignment substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer of this Agreement delivered to the principal office of the Company or its designated agent. Upon such assignment and, if required, such payment, the Company shall enter into a new agreement with the assignee or assignees, as applicable, and this Agreement shall promptly be cancelled. Any Rights, if properly assigned in accordance herewith, may be exercised by a new holder for the issue of Rights Shares without having a new agreement executed.

13.16 Forced Exercise.

(a) General. At any time after the date of issuance of the Rights, if all Rights (as defined in this Agreement and/or each Other Agreement, the “**New Rights**”) then outstanding and issued pursuant to this Agreement and/or any Other Agreement, as applicable, may be exercised in full without breaching Section 13.8 above (such applicable date, a “**Forced Exercise Eligibility Date**”), but only so long as no Equity Conditions Failure then exists, the Company shall have the right to require the Holder to exercise the Rights in full, as designated in the applicable Forced Exercise Notice (as defined below) in accordance with Section 13.2 hereof (each, a “**Forced Exercise**”). If the Company delivers a written request to the Holder, which shall not be provided more than once in any twenty (20) Trading Day period, asking whether the Forced Exercise Eligibility Date has occurred, the Holder shall use its commercially reasonable efforts to timely inform the Company if the Forced Exercise Eligibility Date has occurred. The Company may exercise its right to require a Forced Exercise under this Section 13.16 by delivering a written notice thereof by electronic mail to all, but not less than all, of the holders of New Rights (each, a “**Forced Exercise Notice**”, and the date thereof, each a “**Forced Exercise Notice Date**”) on a Forced Exercise Eligibility Date. For purposes of Section 13.2 hereof, “Forced Exercise Notice” shall be deemed to replace “Exercise Notice” for all purposes thereunder as if the Holder delivered an Exercise Notice to the Company on the Forced Exercise Notice Date, *mutatis mutandis*. Each Forced Exercise Notice shall be irrevocable. Each Forced Exercise Notice shall state (i) the Trading Day selected for the Forced Exercise in accordance with this Section 13.2, which Trading Day shall be the first (1st) Trading Day (or such earlier date as the Holder may designate to the Company in writing) following the applicable Forced Exercise Notice Date (each, a “**Forced Exercise Date**”), (ii) the aggregate portion of the New Rights subject to forced exercise from the Holder and all of the Other Holders pursuant to this Section 13.2 (and analogous provisions under the Other Agreements), and (iii) that there has been no Equity Conditions Failure (or specifying any such Equity Conditions Failure that then exists, with an acknowledgement that unless such Equity Conditions are waived, in whole or in part, such Forced Exercise Notice will be invalid). Notwithstanding anything herein to the contrary, if an Equity Conditions Failure occurs at any time after a Forced Exercise Notice Date and prior to the time of consummation of such applicable Forced Exercise, (A) the Company shall provide the Holder a subsequent notice to that effect and (B) unless the Holder waives the applicable Equity Conditions Failure, the Forced Exercise shall be cancelled and the applicable Forced Exercise Notice shall be null and void.

(b) Pro Rata Exercise Requirement. If the Company elects to cause a Forced Exercise of the Rights pursuant to this Section 13.16, then it must simultaneously take the same action in the same proportion with respect to all of the New Rights.

(c) Definitions.

(i) “**Equity Conditions**” means, with respect to an given date of determination: (i) all Rights Shares shall be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on exercise of the Rights) (the “**Underlying Shares**”) and no Current Public Information Failure exists or is continuing; (ii) on each day during the period beginning thirty calendar days prior to the applicable date of determination and ending on and including the applicable date of determination (the “**Equity Conditions Measuring Period**”), the Common Stock (including all Underlying Shares) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon exercise of the Rights on a timely basis as set forth in Section 13.3 hereof; (iv) any shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating Section 13.8 hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause any Underlying Shares to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on exercise of the Rights) and no Current Public Information Failure exists or is continuing; (viii) the Holder shall not be in (and no other holder of New Rights shall be in) possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (ix) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to material adverse effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Exchange Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Exchange Document; (x) on the applicable date of determination (A) no Authorized Share Failure shall exist or be continuing and the applicable Required Minimum Securities Amount of shares of Common Stock are available under the certificate of incorporation of the Company and reserved by the Company to be issued pursuant to the Rights and (B) all shares of Common Stock to be issued in connection with the event requiring this determination (without regards to any limitations on exercise set forth herein)) may be issued in full without resulting in an Authorized Share Failure; (xi) no bone fide dispute shall exist, by and between any of holder of Rights, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Exchange Document and (xiii) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(ii) “**Equity Conditions Failure**” means that on each day during the period commencing twenty (20) Trading Days prior to the applicable Forced Exercise Notice Date through and including the applicable Forced Exercise Date, the Equity Conditions have not been satisfied (or waived in writing by the Holder).

14. **No Restricted Legends**. For the purposes of Rule 144, the Company acknowledges that the Holder Notes and the Holder Warrants were initially issued pursuant to the Registration Statement, are free of any restricted Securities Act legends and freely tradeable by the Holder and the Rights (and upon exercise thereof, the Right Shares) issued in the Exchange therefor shall therefore be unrestricted and free of any restricted Securities Act legends and freely tradeable by the Holder, and the Company agrees not to take a position contrary to this Section 14.

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

16. **Amendments**. This Agreement may only be amended, modified or waived with the written consent of the Company, the Trustee and the Holder.

17. **Miscellaneous**. Section 9 of the Securities Purchase Agreement are hereby incorporated by reference herein, *mutatis mutandis*.

[The remainder of the page is intentionally left blank]

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of the date set forth on the signature page of the Holder below.

COMPANY:
WORKHORSE GROUP INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Holder and the Company have executed this Agreement as of _____, 20__.

HOLDER:

Outstanding Principal of Holder Notes:

Outstanding Amount of Holder Notes:

Final Paydown Amount

By: _____

Name:

Title:

EXHIBIT A

NOTICE OF ISSUANCE

The undersigned holder hereby exercises the rights (the “**Rights**”) to receive _____ of the shares of Common Stock (the “**Rights Shares**”) of Workhorse Group Inc., a Nevada corporation (the “**Company**”), established pursuant to that certain Waiver, Repayment and Exchange Agreement, dated ____ __, 2025, by and between the Company and the investor signatory thereto (the “**Exchange Agreement**”). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Exchange Agreement.

The Company shall deliver to Holder, or its designee or agent as specified below, _____ Rights Shares in accordance with the terms of the Rights. Delivery shall be made to Holder, or for its benefit, as follows:

☐ Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to:

☐ Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant:

DTC Number:

Account Number:

Date: _____ ,

Name of Registered Holder

By: _____

Name:

Title:

Tax ID: _____

Facsimile: _____

E-mail Address: _____

**Workhorse Group and Motiv Electric Trucks Executed Definitive Agreement to Combine,
Creating a Leading Medium-Duty Electric Truck OEM in North America**

*Joins Workhorse's proven vehicles, manufacturing capabilities and national dealer network with Motiv's
diverse product portfolio and top fleet relationships*

*Positions combined company to create value by offering broader portfolio of high performing commercial
EVs at lower unit costs in the sizeable medium-duty truck market*

*Strengthens combined company's financial profile through improved operational scale and
simplified capital structure*

Workhorse closed today on \$20M sale leaseback of Union City plant and \$5M convertible note

CINCINNATI, Ohio and FOSTER CITY, Calif., August [15], 2025 – Workhorse Group Inc. (Nasdaq: WKHS) (“Workhorse” or the “Company”), an American technology company focused on pioneering the transition to zero-emission commercial vehicles, and Motiv Electric Trucks (“Motiv”), a leading manufacturer of medium-duty electric trucks and buses, today announced that they have entered into a definitive merger agreement to combine in a transaction that will create a leading North American medium-duty electric truck OEM.

Under the terms of the merger agreement, following the completion of the all-stock transaction, Motiv’s controlling investor will become the majority owner of the combined company and Workhorse shareholders will maintain a significant equity stake. In connection with the merger agreement, Workhorse has completed a sale leaseback (“SLB”) and obtained convertible note financing. The transactions value the combined company at approximately \$105 million.¹

The combination brings together two innovators in the medium-duty electric vehicle space to better serve a blue-chip customer base and enhance value for shareholders. Building on the companies’ complementary platforms, the combined business will be a leader in the \$23 billion medium-duty truck segment² with a full range of Class 4-6 trucks. The companies believe that together, they will benefit from increased scale, an expanded product portfolio and enhanced operational efficiencies to support lower unit costs while optimizing total cost of ownership (TCO) for customers.

The combined company is expected to have a strengthened financial profile with a simplified capital structure and the financial resources to capture anticipated demand from the ongoing transition to clean energy and better help customers decarbonize their fleets.

Following the closing of the transaction, Scott Griffith, Motiv CEO, is expected to serve as CEO of the combined company and Rick Dauch, Workhorse CEO, is expected to serve as an advisor to the combined company.

“Bringing together two leading OEMs in the medium-duty space strengthens our ability to reduce the cost of electric trucks and make the total cost of ownership even more compelling,” said Scott Griffith, CEO of Motiv. “We believe this is a coming-of-age moment—not just for Motiv and Workhorse, but for the industry as a whole, and that widespread adoption of medium-duty electric trucks will come from achieving cost parity vs. ICE and diesel trucks and offering compelling long-term value. That’s exactly what we’re focused on delivering with this merger, and with a combined more than 17 million miles under our belt, we believe the transaction will put us in a strong starting position to deliver on this vision. I’m excited by the opportunity to lead the combined company, work closely with the Motiv and Workhorse teams to capture the opportunities ahead, and deliver for our customers, our shareholders and the communities in which our trucks operate.”

¹ On an as-converted basis and inclusive of the value of the sale leaseback transaction and the convertible note transaction that were consummated in connection with signing.

² Represents 2025 annual forecast of registrations as of April 2024 per S&P Global Mobility for NTEA US Commercial Vehicle Market Report, multiplied by an assumed \$100,000 value per truck.

“This transaction represents a significant milestone for Workhorse, our customers, our stakeholders and our shareholders,” said Rick Dauch, CEO of Workhorse. “By combining with Motiv and completing the related transactions, we are creating a broader product offering, strengthening our near- and long-term financial position and providing Workhorse shareholders with the opportunity to participate in the upside of a leader in the medium-duty EV commercial vehicle market. We believe Motiv is the right partner to support the advancement of our combined product roadmap and capture new growth opportunities. Together, we are confident we will be even better positioned to win the commercial EV transition and create value for shareholders.”

Compelling Strategic and Financial Benefits

Workhorse and Motiv believe that the investments made into their respective businesses position the combined company to have the sector’s most scalable manufacturing, most advanced and road-tested products, and most wide-reaching go-to-market networks. As a result, the companies believe the transaction will provide significant benefits to customers and shareholders by:

- **Creating a category leader positioned for rapid innovation and scalable growth.** Joining Motiv’s diverse product portfolio and top fleet relationships with Workhorse’s proven vehicles, manufacturing capabilities and national dealer network is expected to create a platform for long-term growth. Workhorse’s Union City facility has the capacity to eventually produce up to 5,000 trucks per year.
- **Leveraging combined scale and strengths to reduce unit costs.** Workhorse and Motiv believe that the combined company will compete more effectively with the industry’s pure-play electric and legacy OEMs. Workhorse and Motiv believe the combined company will capitalize on new opportunities to serve more customers with a more competitively advantaged electric offering than gas/diesel trucks and buses on a TCO basis.
- **Joining complementary customer bases.** Workhorse and Motiv believe the next phase of large-scale adoption of medium-duty electric trucks in North America will be driven by national-scale commercial fleets with tested and piloted multi-depot EV truck operations. Together, Motiv and Workhorse have served 10 of the largest medium-duty fleets in North America³, positioning the combined company to expand adoption through these existing relationships with likely early scalars.
- **Establishing a strong financial foundation.** The companies believe that the transaction strengthens the combined company’s financial position and creates opportunities for margin expansion, enabling greater flexibility to pursue future growth initiatives. With a simplified capital structure, the combined company also expects to be better positioned to raise additional capital post-close.
- **Presenting significant synergy opportunities.** The companies believe there is the potential to achieve at least \$20 million of cost synergies, including through R&D, G&A, and facility cost-reductions by the end of 2026. The combined companies also intend to utilize a product and engineering approach to maximize the use of common software, hardware, and IP across its Class 4-6 platforms to pursue additional cost savings, an enhanced technology baseline and a best-in-class customer experience with limited downtime and optimized TCO.

³ Valgen and Motiv internal data.

Transaction Details

Under the terms of the merger agreement, Motiv will be merged with a newly created subsidiary of Workhorse in exchange for newly issued shares of Workhorse common stock. Upon completion of the transaction, on a fully diluted basis, Motiv's controlling investor initially will own approximately 62.5% of the combined company, Workhorse shareholders will own approximately 26.5% and Workhorse's existing senior secured lender will have rights to receive common stock that represent approximately 11%, all of which are subject to certain potential adjustments and additional future dilution. Pursuant to the transaction, certain stockholders of Motiv, to the extent they are also holders of financial indebtedness of Motiv, agreed to cancel their financial indebtedness to Motiv in exchange for Workhorse common stock. Additional information regarding Workhorse's agreement with its secured lender and select other parties will be available in the Company's SEC filings.

In connection with the proposed merger transaction, Workhorse also completed two transactions with entities affiliated with Motiv's controlling investor: the SLB transaction for Workhorse's Union City, Indiana manufacturing facility for \$20 million and the secured, convertible note financing for \$5 million, each of which were consummated at the time of execution with the merger agreement. These transactions are expected to provide near-term liquidity to fund Workhorse's operations through closing and to provide capital to pay down debt owed to Workhorse's existing senior secured lender. At closing of the merger, all remaining indebtedness to such lender, including all warrants currently held by the lender, will be repaid and/or cancelled, with the only remaining secured indebtedness of the combined companies being the \$5 million secured, convertible note held by Motiv's controlling investor, which may convert to equity in connection with post-closing financing.

In addition, the merger agreement includes a condition to closing that entities affiliated with Motiv's controlling investor will provide \$20 million in debt financing at the completion of the transaction, of which approximately \$10 million is expected to be available in a revolving credit facility and an additional \$10 million is expected to be available to fund manufacturing costs associated with confirmed purchase orders of the combined company in an ABL facility. The combined company also will seek to raise additional equity financing to fund its go forward strategic execution.

Timing and Approvals

The transaction is expected to close in the fourth quarter of 2025, subject to Workhorse shareholder approval and other customary closing conditions, including the debt financing commitment noted above.

Letter to Workhorse Shareholders

Workhorse also issued a letter to its shareholders highlighting the strategic and financial benefits of the proposed transaction. The full letter from Rick Dauch, Workhorse CEO, can be accessed [here](#).

Conference Call

Workhorse and Motiv management will hold a joint conference call on Tuesday, August 19, at 10:00 a.m. Eastern Time (7:00 a.m. Pacific time) to discuss the proposed transaction and Workhorse's second quarter 2025 financial results.

U.S. dial-in: 877-407-8289

International dial-in: 201-689-8341

Please call the conference telephone number 10 minutes prior to the start time. An operator will register your name and organization. If you have any difficulty connecting with the conference call, please contact Gateway Group at 949-574-3860.

The conference call will be broadcast live and available for replay [here](#) and via the Investor Relations section of Workhorse's website.

A telephonic replay of the conference call will be available after 11:00 a.m. Eastern time on the same day through August 26, 2025.

Toll-free replay number: 877-660-6853

International replay number: 201-612-7415

Replay ID: 13755381

Shareholder Questions

Workhorse shareholders are invited to submit questions in advance of the call. Questions should be submitted in writing to shareholder@workhorse.com by 4:00 p.m. ET on August 18, 2025.

Advisors

Stifel/Miller Buckfire are serving as financial advisors to Workhorse, and Taft Stettinius & Hollister LLP is serving as legal counsel. Joele Frank, Wilkinson Brimmer Katcher is serving as strategic communications advisor to Workhorse.

TD Cowen is serving as financial advisor to Motiv, and DLA Piper LLP (US) is serving as legal counsel.

About Workhorse Group Inc.

Workhorse Group Inc. (Nasdaq: WKHS) is a technology company focused on pioneering the transition to zero-emission commercial vehicles. Workhorse designs and builds its vehicles in the United States at the Workhorse Ranch in Union City, Indiana. The company's best-in-class vehicles are designed for last-mile delivery, medium-duty operations, and a growing range of specialized applications. For more information, visit www.workhorse.com.

About Motiv Electric Trucks

Founded in 2009 and headquartered in the San Francisco Bay Area, Motiv is a leading manufacturer of medium duty, zero-emission electric trucks and buses. Motiv produces a range of vehicles; including step vans, shuttle buses, box trucks and work trucks, all of which eliminate tailpipe CO2 emissions and particulate matter, while offering drivers and passengers a more comfortable, healthier and safer ride.

Motiv's combination of operational cost savings and environmental performance helps customers meet increasingly stringent emissions and pollution standards as well as achieve their own Net-Zero, ESG or other climate impact-related pledges and commitments. More information about the company's products, services and career opportunities is available at www.motivtrucks.com.

Additional Information and Where to Find It

In connection with the proposed transaction, Workhorse intends to file with the SEC a Proxy Statement on Schedule 14A (the "Proxy Statement"). Workhorse may also file other relevant documents with the SEC regarding the transactions described herein. This document is not a substitute for the Proxy Statement or any other document that Workhorse may file with the SEC. Any Definitive Proxy Statement (if and when available) will be mailed to shareholders of Workhorse. SHAREHOLDERS OF WORKHORSE ARE URGED TO READ THE PROXY STATEMENT AND ANY OTHER DOCUMENTS FILED OR TO BE FILED WITH THE SEC IN CONNECTION WITH THE TRANSACTIONS DESCRIBED HEREIN, AS WELL AS ANY AMENDMENTS OR SUPPLEMENTS TO THESE DOCUMENTS, CAREFULLY AND IN THEIR ENTIRETY IF AND WHEN THEY BECOME AVAILABLE, AS THEY CONTAIN OR WILL CONTAIN IMPORTANT INFORMATION ABOUT WORKHORSE, THE PROPOSED TRANSACTIONS DESCRIBED HEREIN, AND RELATED MATTERS. Shareholders will be able to obtain a free copy of the Proxy Statement (if and when available) and other relevant documents once such documents are filed with the SEC from the SEC's website at www.sec.gov, or by directing a request by mail to Workhorse Group Inc., 3600 Park 42 Drive, Suite 160E, Sharonville, Ohio 45241, or from the Workhorse's website at www.ir.workhorse.com.

Participants in the Solicitation

Workhorse and certain of its directors and officers may be deemed to be "participants" in the solicitation of proxies in respect of the proposed transaction. Information concerning the directors and officers of the Company and interests of the persons who may be considered "participants" in the solicitation is set forth in Amendment No. 1 to Workhorse's Annual Report on Form 10-K for the year ended December 31, 2024, including under the headings "Item 10. Directors, Executive Officers and Corporate Governance", "Item 11. Executive Compensation", "Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" and "Item 13. Certain Relationships and Related Transactions, and Director Independence", filed with the SEC on April 30, 2025, and available at https://www.sec.gov/ix?doc=/Archives/edgar/data/1425287/000121390025037631/ea0239686-10ka1_workhorse.htm. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement and other relevant materials to be filed with the SEC regarding the proposed transaction when such materials become available. Investors should read the proxy statement carefully when it becomes available before making any voting or investment decisions. Copies of these documents can be obtained, without charge, at the SEC's website at www.sec.gov, or by directing a request to Workhorse at the address above, or at www.ir.workhorse.com.

Cautionary Note Regarding Forward-Looking Statements

This press release contains “forward-looking statements” within the meaning of Section 21E of the Exchange Act, and the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact included or incorporated by reference in this press release, including, among other things, statements regarding the proposed merger transaction between Workhorse and Motiv, future events, plans and anticipated results of operations, business strategies, the anticipated benefits of the proposed transaction, the anticipated impact of the proposed transaction on the combined company’s business and future financial and operating results, the expected amount and timing of synergies from the proposed transaction, the anticipated closing date for the proposed transaction and other aspects of the combined company’s operations or operating results are forward-looking statements. Forward-looking statements may be identified by the use of the words “believe”, “plan”, “expect”, “estimate”, “budget”, “schedule”, “forecast”, “intend”, “anticipate”, “target”, “project”, “contemplate”, “predict”, “potential”, or “continue”, and similar words or variations of such words and phrases or state that certain actions, events or results “may”, “could”, “would”, “should”, “might”, “will” or “will be taken”, “occur” or “be achieved”. However, the absence of these words does not mean that the statements are not forward-looking. Where, in any forward-looking statement, Workhorse expresses an expectation or belief as to future results, such expectation or belief is expressed in good faith and believed to be reasonable at the time such forward-looking statement is made. However, these statements are not guarantees of future performance and involve certain risks, uncertainties and other factors beyond the parties’ control. Therefore, actual outcomes and results may differ materially from what is expressed or forecast in the forward-looking statements.

The following risks and uncertainties, among others, could cause actual results or events to differ materially from those described in forward-looking statements: the parties’ ability to successfully integrate their businesses and technologies, which may result in the combined company not operating as effectively and efficiently as expected; the risk that the expected benefits and synergies of the proposed transaction may not be fully achieved in a timely manner, or at all; the risk associated with Workhorse’s ability to obtain the approval of its shareholders required to consummate the proposed transaction and the timing of the closing of the proposed transaction, including the risk that the conditions to the transaction are not satisfied on a timely basis or at all or the failure of the transaction to close for any other reason or to close on the anticipated terms; the risk that any regulatory approval, consent or authorization that may be required for the proposed transaction is not obtained or is obtained subject to conditions that are not anticipated; the occurrence of any event, change or other circumstance that could give rise to the termination of the proposed transaction; unanticipated difficulties, liabilities or expenditures relating to the transaction; the effect of the announcement, pendency or completion of the proposed transaction on the parties’ business relationships and business operations generally; the effect of the announcement or pendency of the proposed transaction on Workhorse’s common stock prices and uncertainty as to the long-term value of the combined company’s common stock; risks that the proposed transaction disrupts current plans and operations of the parties and their respective management teams and potential difficulties in hiring or retaining employees as a result of the proposed transaction; our ability to develop and manufacture our product portfolio, including the W4 CC, W750, and W56 and other programs; our ability to attract and retain customers for our existing and new products; ongoing and anticipated changes in the U.S. political environment, including those resulting from the new Presidential Administration, control of Congress, and changes to regulatory agencies; the implementation of changes to the existing tariff regime by the new Presidential Administration and measures taken in response to such tariffs by foreign governments; risks associated with obtaining orders and executing upon such orders; the unavailability, reduction, elimination or adverse application of government subsidies and incentives or any challenge to or failure by the federal government, states or other governmental entities to adopt or enforce regulations such as the California Air Resource Board’s Advanced Clean Fleet regulation; changes in attitude toward environmental, social, and governance matters among regulators, investors, and parties with which we do business; supply chain disruptions, including constraints on steel, semiconductors and other material inputs and resulting cost increases impacting us, our customers, our suppliers or the industry; our ability to capitalize on opportunities to deliver products to meet customer requirements; our limited operations and need to expand and enhance elements of our production process to fulfill product orders; our general inability to raise additional capital to fund our operations and business plan; our ability to receive sufficient proceeds from our current and any future financing arrangements to meet our immediate liquidity needs and the potential costs, dilution and restrictions resulting from any such financing; our ability to maintain compliance with the listing requirements of the Nasdaq and the impact of any steps we have taken, including reverse splits of our common stock, on our operations, stock price and future access to funds; our ability to protect our intellectual property; market acceptance of our products; our ability to obtain sufficient liquidity from operations and financing activities to continue as a going concern and, our ability to control our expenses; the effectiveness of our cost control measures and impact such measures could have on our operations, including the effects of furloughing employees; potential competition, including without limitation shifts in technology; volatility in and deterioration of national and international capital markets and economic conditions; global and local business conditions; acts of war (including without limitation the conflicts in Ukraine and the Middle East) and/or terrorism; the prices being charged by our competitors; our inability to retain key members of our management team; our inability to satisfy our customer warranty claims; the outcome of any regulatory or legal proceedings, including with Coulomb Solutions Inc.; our ability to realize the benefits of the sale and leaseback transaction of our Union City Facility; and other risks and uncertainties and other factors discussed from time to time in our filings with the Securities and Exchange Commission (“SEC”).

Additional information on these and other factors that may cause actual results and Workhorse's performance to differ materially is included in Workhorse's periodic reports filed with the SEC, including, but not limited to, Workhorse's Annual Report on Form 10-K for the year ended December 31, 2024, including those factors described under the heading "*Risk Factors*" therein, and Workhorse's subsequent Quarterly Reports on Form 10-Q. Copies of Workhorse's filings with the SEC are available publicly on the SEC's website at www.sec.gov or may be obtained by contacting Workhorse. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove incorrect, actual results may vary in material respects from those projected in these forward-looking statements. Readers are cautioned not to place undue reliance upon any forward-looking statements, which speak only as of the date made. These forward-looking statements are made only as of the date hereof, and Workhorse undertakes no obligations to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

No Offer or Solicitation

This press release is not intended to and does not constitute an offer to buy or sell or the solicitation of an offer to buy or sell any securities, or a solicitation of any vote or approval, nor shall there be any sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

No offering of securities will be made except by means of a prospectus meeting the requirements of the Securities Act of 1933, as amended, or an exemption therefrom.

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