
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 22, 2021

Immuneering Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

001-40675
(Commission
File Number)

26-1976972
(I.R.S. Employer
Identification No.)

245 Main St.
Second Floor
Cambridge, MA 02142
(Address of principal executive offices) (Zip Code)

(617) 500-8080
(Registrant's telephone number, include area code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A Common Stock, \$0.001 par value per share	IMRX	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On December 22, 2021 (the "Closing Date"), Immuneering Corporation, a Delaware corporation ("Immuneering"), entered into a Share Purchase Agreement (the "SPA") with BioArkive, Inc., a California corporation ("BioArkive"), and each of the shareholders of BioArkive (each, a "Seller") and, on the same day, consummated the transaction under the SPA. As a result of the transaction under the SPA, Immuneering acquired all of the equity of BioArkive, which accordingly then became a wholly owned subsidiary of Immuneering.

Pursuant to the SPA, Immuneering purchased on the Closing Date all outstanding shares of capital stock of BioArkive for an aggregate purchase price of \$8.75 million. The purchase price was paid by Immuneering through the issuance to the Sellers of an aggregate of 379,635 shares of Immuneering's Class A common stock (the "Common Stock"). The number of shares of Common Stock (the "Consideration Shares") issued to the Sellers in exchange for the sale of their BioArkive shares to Immuneering was calculated using a value based on the average of the daily volume weighted average prices of the Common Stock on the Nasdaq Stock Exchange for the 30-trading day period ending on and including the trading day immediately prior to the Closing Date. The Consideration Shares were issued in a private placement transaction and are not registered for resale. 28 employees of BioArkive became employees of Immuneering as a result of the transaction. Prior to the transaction, Brett Hall, Chief Scientific Officer of Immuneering and the Founder and Chairman of the board of directors of BioArkive, held the majority of the outstanding shares of BioArkive capital stock. The SPA contains customary representations of BioArkive and the Sellers as well as indemnification obligations of the Sellers to Immuneering for the breach of such representations. In connection with the acquisition, Dr. Hall resigned from the Board of Directors of BioArkive.

BioArkive is a San Diego based contract research organization that has previously provided preclinical research services and biosample storage to Immuneering and other biotechnology companies. Following its acquisition, BioArkive will be fully integrated into Immuneering to exclusively support Immuneering's internal preclinical research activities for its oncology pipeline. BioArkive's current preclinical research activities for Immuneering include, but are not limited, to the following: establishing and processing 3D-tumor growth assays ("3D-TGA") that are aligned to the human tumor microenvironment and are used to evaluate pharmacologic responses to patient derived or lab propagated cell lines in a 3D-TGA; developing a PBMC assay for Immuneering for use to measure pharmacodynamic endpoints (pMEK/pERK) when IMM-1-104 enters human clinical trials; and other preclinical research activities such as cell lysis assays, cell metabolism assays, pharmacology assays, binding assays, reporter assays, imaging, phosphorylation assays, 2D cell culture, and screening assays. Fully integrating these research activities into Immuneering will allow Immuneering greater control over its preclinical research programs, including control of BioArkive's proprietary 3D-TGA, which Immuneering has used to accurately predict the in vivo tumor growth inhibition of IMM-1-104 in recently conducted animal studies.

In connection with the acquisition, Immuneering has assumed the obligations under BioArkive's main lease agreement. The lease agreement, dated as of July 22, 2021, between BioArkive and Thornmint 13, LLC (the "Lease Agreement") provides for approximately 38,613 square feet of office and laboratory space in San Diego, California, a monthly base rent of \$55,990 and current monthly operating expenses of \$11,726 and a term ending on April 30, 2032, with an option to extend the Lease Agreement for one additional ten year period. The monthly base rent will increase each year, until it reaches \$75,246 in October 2031. In addition, the base rent may be increased upon certain circumstances, including where the lessee fails to comply with specified provisions of the Lease Agreement.

The foregoing descriptions of the SPA and the Lease Agreement do not purport to be complete and are qualified in their entirety by reference to the SPA and the Lease Agreement, copies of which are filed as Exhibit 2.1 and Exhibit 10.1, respectively, to this Current Report on Form 8-K.

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

The information regarding the Lease Agreement described in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 8.01. Other Events.

On December 22, 2021, Immuneering also announced that its dual mitogen-activated protein kinase kinase, or MEK, product candidate, IMM-1-104, is currently undergoing Investigational New Drug ("IND") enabling studies and Immuneering has initiated 28-day repeat-dose Good Laboratory Practices, or GLP, toxicity studies across two animal species models. Due to supply chain constraints and the impact of follow-on effects due to such constraints, Immuneering now plans to submit an IND for IMM-1-104 to the Food & Drug Administration (the "FDA") in the third quarter of 2022 and to enroll the first patient in its first-in-human Phase 1 clinical trial of IMM-1-104 for the treatment of advanced solid tumors in patients harboring RAS mutant tumors in the fourth quarter of 2022, assuming Immuneering's IND for IMM-1-104 is accepted.

Forward-Looking Statements

This Current Report on Form 8-K (the “Current Report”) contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. All statements contained in this Current Report that do not relate to matters of historical fact should be considered forward-looking statements, including without limitation statements regarding the timing to submit an IND for IMM-1-104 to the FDA and enroll the first patient in its first-in-human Phase 1 clinical trial of IMM-1-104, as well as the successful integration of BioArkive following its acquisition by Immuneering.

These forward-looking statements are based on Immuneering’s current expectations and are subject to inherent uncertainties, risks and assumptions that are difficult to predict. Factors that could cause actual results to differ include, but are not limited to, the risks inherent in integration of acquired businesses, oncology and neuroscience drug development, including target discovery, target validation, lead compound identification, lead compound optimization, preclinical studies, the regulatory process, drug manufacture, and clinical trials.

These and other important factors discussed under the caption “Risk Factors” in Immuneering’s Form 10-Q filed with the Securities and Exchange Commission (the “SEC”) on November 9, 2021 and its other reports filed with the SEC could cause actual results to differ materially from those indicated by the forward-looking statements made in this Current Report. Any such forward-looking statements represent management’s estimates as of the date of this Current Report. While Immuneering may elect to update such forward-looking statements at some point in the future, it disclaims any obligation to do so, even if subsequent events cause its views to change. These forward-looking statements should not be relied upon as representing Immuneering’s views as of any date subsequent to the date of this Current Report.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No	Description
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2.1	Share Purchase Agreement by and among Immuneering Corporation, BioArkive, Inc. and BioArkive’s shareholders, dated as of December 22, 2021
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10.1	Lease Agreement, by and between BioArkive, Inc. and Thornmint 13, LLC, dated as of July 22, 2021
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104	Cover Page Interactive Data File (embedded within the Inline XBRL document)
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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.

IMMUNEERING CORPORATION

Date: December 22, 2021

By: /s/ Benjamin J. Zeskind

Name: Benjamin J. Zeskind, Ph.D.

Title: Co-Founder, President, Chief Executive Officer

SHARE PURCHASE AGREEMENT

by and among

BioArkive, Inc.,

the Sellers Listed on the Signature Pages Hereto,

and

the Purchaser

DATED AS OF DECEMBER 22, 2021

[NO AGREEMENT, ORAL OR WRITTEN, REGARDING OR RELATING TO ANY OF THE MATTERS COVERED BY THIS DOCUMENT HAS BEEN ENTERED INTO BETWEEN THE PARTIES. IT IS NOT INTENDED TO CREATE, AND WILL NOT BE DEEMED TO CREATE, A LEGALLY BINDING OR ENFORCEABLE OFFER OR AGREEMENT OF ANY TYPE OR NATURE PRIOR TO THE ACTUAL EXECUTION OF THIS DOCUMENT BY ALL SUCH PARTIES AND THE DELIVERY OF AN EXECUTED COPY HEREOF BY ALL SUCH PARTIES TO ALL OTHER PARTIES.]

Table of Contents

	Page
ARTICLE I EXCHANGE OF COMPANY SHARES FOR CONSIDERATION SHARES	2
1.1 Exchange of Company Shares for Consideration Shares	2
ARTICLE II CLOSING	2
2.1 Closing	2
2.2 Closing Deliverables by the Sellers or the Company	2
2.3 Closing Deliverables by the Purchaser	3
2.4 Withholding	3
ARTICLE III REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY	3
3.1 Organization	3
3.2 Authorization	4
3.3 No Conflicts; Consents	4
3.4 Capitalization	4
3.5 Subsidiaries; Investments	5
3.6 Financial Statements	5
3.7 Undisclosed Liabilities; Indebtedness	6
3.8 Absence of Certain Changes	7
3.9 Material Contracts	9
3.10 Title to Assets	11
3.11 Real Property	11
3.12 Intellectual Property	12
3.13 Data Privacy and Security.	16
3.14 Legal Proceedings; Orders	17
3.15 Compliance with Laws; Permits	18
3.16 Environmental Matters	20
3.17 Personnel Matters	21
3.18 Employee Benefit Plans	22
3.19 Tax Matters	24
3.20 Suppliers; Customers	26
3.21 Insurance	27
3.22 Transaction with Related Parties	28
3.23 Bank Accounts	28
3.24 Brokers	28
3.25 Full Disclosure	28
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS	28
4.1 [Reserved]	28
4.2 Authorization	28
4.3 Restricted Securities	29
4.4 No Conflicts; Consents	29

4.5	Title to Company Equity Interests	29
4.6	Legal Proceedings; Orders	30
4.7	Investment Purpose	30
4.8	Accredited Investor	30
4.9	Brokers	30
ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER		31
5.1	Organization	31
5.2	Authorization	31
5.3	Valid Issuance of Shares	31
5.4	No Conflicts; Consents	31
5.5	SEC Filings	32
5.6	Legal Proceedings; Orders	32
5.7	Investment Purpose	32
5.8	Brokers	32
ARTICLE VI COVENANTS		33
6.1	Information Preservation	33
6.2	Certifications.	33
6.3	Company 401(k) Plan Termination.	33
6.4	Release	34
6.5	Public Announcements	35
6.6	Further Assurances	35
6.7	Sellers Majority Indemnification	35
ARTICLE VII TAX MATTERS		36
7.1	Tax Returns	36
7.2	Tax Contests	36
7.3	Books and Records; Cooperation	37
7.4	Transfer Taxes	37
7.5	S Corporation Status	37
7.6	Intended Tax Treatment	37
7.7	Coordination	37
ARTICLE VIII INDEMNIFICATION		38
8.1	Survival	38
8.2	Indemnification Provisions for the Purchaser's Benefit	39
8.3	Notice and Defense Procedures	40
8.4	Limitations and Qualifications	43
8.5	Tax Treatment of Indemnity Payments	44
8.6	Payments	44
8.7	Exclusive Remedies	44
ARTICLE IX DEFINITIONS		45
9.1	Definitions	45
9.2	Additional Defined Terms	56
9.3	Certain Interpretive Matters	58

ARTICLE X MISCELLANEOUS

10.1	Expenses	59
10.2	Notices	59
10.3	Severability.	60
10.4	Entire Agreement.	60
10.5	Successors and Assigns; Assignment	60
10.6	No Third-Party Beneficiaries	61
10.7	Tax Advice	61
10.8	Equitable Remedies	61
10.9	Amendment and Modification; Waivers.	61
10.10	Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.	61
10.11	Counterparts	62

Schedules

Schedule A Seller Equity Information

SHARE PURCHASE AGREEMENT

THIS SHARE PURCHASE AGREEMENT is entered into as of December 22, 2021 (this "Agreement"), by and among (a) BioArkive, Inc., a corporation incorporated pursuant to the laws of California (the "Company"), (b) the Sellers listed on the signature pages hereto (each individually a "Seller", and collectively, the "Sellers"), and (c) Immuneering Corporation, a corporation incorporated pursuant to the laws of Delaware (the "Purchaser"). The Company, the Sellers, and the Purchaser shall each be referred to in this Agreement, unless the context otherwise requires, as a "Party," and collectively as the "Parties." Capitalized terms used herein shall have the meanings ascribed thereto, or as otherwise indicated by reference, in Article IX hereof.

WITNESSETH:

WHEREAS, the Sellers are the beneficial and record owners of all of the issued and outstanding shares of common stock of the Company (the "Company Shares") as of the date hereof, which constitute all of the shares of capital stock of the Company;

WHEREAS, at the Closing, on the terms and subject to the conditions set forth herein, the Sellers desire to transfer all of the Company Shares to the Purchaser and the Purchaser desires to acquire all of the Company Shares from the Sellers (the "Transaction");

WHEREAS, each of the Parties intends that (i) the Purchaser's acquisition of the Company Shares and the Sellers' receipt of the Consideration Shares (as defined below) as consideration therefor shall qualify as a "reorganization" within the meaning of Section 368(a) of the Code and (ii) this Agreement is, and is hereby adopted as, a "plan of reorganization" within the meaning of Section 368 of the Code and Treasury Regulations Section 1.368-2(g) and for purposes of Sections 354 and 361 of the Code;

WHEREAS, as a condition and material inducement to the Purchaser's execution and delivery of this Agreement, on or prior to Closing, the Company shall cause each of the Key Continuing Employees to execute and deliver an employment offer letter and proprietary information and invention assignment agreement, each on the Purchaser's form or other form approved by the Purchaser, effective on the Closing Date (collectively the "Key Continuing Employee Employment Agreements"); and

WHEREAS, the Sellers and the Company acknowledge and agree that their respective obligations contained in this Agreement are a material inducement to the Purchaser to enter into this Agreement and to perform their obligations hereunder, and that the Purchaser would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated if any Seller or the Company breached any of the provisions of this Agreement binding upon such Seller or the Company, as applicable.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

EXCHANGE OF COMPANY SHARES FOR CONSIDERATION SHARES

1.1 Exchange of Company Shares for Consideration Shares. Subject to the terms and conditions of this Agreement, at the Closing:

(a) Each Seller shall transfer and deliver to the Purchaser, and the Purchaser shall acquire and accept from all of the Sellers, all of the rights, title and interests to all of the Company Shares respectively held or deemed held by each Seller, free and clear of all Liens.

(b) In exchange for the Company Shares, the Purchaser shall issue and deliver to each Seller, and each Seller shall receive and accept, a number of Purchaser Common Shares equal to (i) the Exchange Ratio, *multiplied* by (ii) the number of Company Shares respectively held or deemed held by such Seller. The number of Purchaser Common Shares to be issued to each Seller pursuant to this Section 1.1(b) shall be referred to as the "Consideration Shares." No fractional Consideration Shares shall be issued, and to the extent the number of Consideration Shares to be issued to any Seller is fractional, such number shall be rounded up or down to the nearest whole Consideration Share. In no event shall the number of Consideration Shares issued to all Sellers in the aggregate exceed the Purchaser Consideration Share Pool.

ARTICLE II

CLOSING

2.1 Closing. Subject to the terms and conditions of this Agreement, the closing of the Transaction (the "Closing"), shall take place remotely, simultaneously with the execution and delivery of this Agreement. The date on which the Closing occurs is referred to herein as the "Closing Date."

2.2 Closing Deliverables by the Sellers or the Company. At the Closing, the Sellers or the Company, as applicable, shall deliver, or cause to be delivered, to the Company, and the Purchaser, as applicable, the following:

(a) Transfer powers, reasonably acceptable to the Purchaser, duly endorsed in blank for the Company Shares.

(b) A certificate of the Secretary (or equivalent officer) of the Company, in form and substance reasonably satisfactory to the Purchaser, (i) attaching (A) certified copies of the resolutions of the Company's board of directors (or equivalent governing body) and shareholders, and with respect to each Seller that is an entity, if any, each such Seller's members, shareholders, partners and governing bodies, if applicable, authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the Transaction, (B) true, complete and correct copies of the Company's Organizational Documents and (C) good standing certificates (from the Company's jurisdiction of formation if the concept of good standing exists in such jurisdiction) and tax clearance certificates (or the equivalent thereof), if available, for the Company from its jurisdiction of formation and each jurisdiction in which the Company is qualified to do business, in each case, dated no more than three (3) Business Days prior to the Closing Date, and (ii) certifying that each of the aforementioned items is effective as of the Closing Date and has not been amended, modified or changed.

- (c) A properly completed and duly executed IRS Form W-9 from each Seller.
- (d) The third-party consents listed on Schedule 3.3(a), in a form reasonably satisfactory to the Purchaser, executed by the third-parties thereto.
- (e) The executed Key Continuing Employee Employment Agreements.

(f) Executed employment offer letters and proprietary information and invention assignment agreements, each on the Purchaser's form or other form approved by the Purchaser, effective on the Closing Date, from ninety percent (90%) of the Remaining Employees (collectively the "Remaining Employee Employment Agreements") and together with the Key Continuing Employee Employment Agreements, the "Employment Agreements").

2.3 Closing Deliverables by the Purchaser. At the Closing, the Purchaser shall issue to the Sellers (or cause the issuance of) the Consideration Shares comprising the Purchase Consideration Pool in accordance with Section 1.1.

2.4 Withholding. The Purchaser, its Affiliates and their agents shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts required to be deducted and withheld under the Code or any Tax Law. To the extent that amounts are so withheld or deducted, such withheld or deducted 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.

ARTICLE III

REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

All references to the "Company" as used in Sections 3.6 through 3.25 shall include not only the Company but also all of their predecessors (excluding any Seller), as applicable, including while existing under prior names and corporate and limited liability company or entity forms. Except as expressly set forth on the Company Disclosure Schedule, the Company hereby represents and warrants to the Purchaser as follows:

3.1 Organization. The Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation (if the concept of good standing exists in such jurisdiction). The Company has the requisite power and authority to own or lease and operate all of its properties and assets and to carry on its business as it is now being conducted and as it is currently contemplated to be conducted. The Company is duly qualified or licensed and is in good standing to do business in each jurisdiction in which the nature of its business or the character or location of any properties or assets owned, leased, held or used by it makes such qualification or license necessary, except for those jurisdictions where the failure to be so qualified or licensed would not have, individually or in the aggregate, a material and adverse effect on the Company. The Company has made available to the Purchaser true, correct and complete copies of the Company's Organizational Documents, each as amended and in effect as of the date hereof. The Company's Organizational Documents are in full force and effect and the Company is not in violation of any provision of its Organizational Documents.

3.2 Authorization. The Company has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The Company has the requisite power and authority to execute and deliver each Transaction Document to which it is a party, to perform its obligations thereunder and to consummate the Transaction. The execution and delivery of the Transaction Documents to which the Company is a party and the consummation of the Transaction have been duly authorized by the action on the part of the Company. Each of the Transaction Documents to which the Company is a party has been duly and validly executed and delivered by the Company and (assuming the due authorization, execution and delivery by the other parties thereto) each such Transaction Document, when so executed and delivered, will constitute the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

3.3 No Conflicts; Consents.

(a) Except as set forth on Schedule 3.3(a), and assuming the making of the filings and the receipt of the consents or waiting period terminations or expirations identified in Section 3.3(b), none of the execution, delivery and performance by the Company of this Agreement or the other Transaction Documents to which it is a party, nor the consummation of the Transaction by the Company, requires the consent, notice or other action by any Person under, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, or gives rise to a right of termination, modification, acceleration or cancellation under any provision of (i) the Company's Organizational Documents; (ii) any Law applicable to the Company; or (iii) any Material Contract or material Permit to which the Company is a party or by which any of its properties or assets are bound (including any Company Intellectual Property or Company Technology).

(b) Except as set forth on Schedule 3.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of the Company in connection with the execution, delivery and performance by the Company of this Agreement or the other Transaction Documents to which it is a party or the consummation of the Transaction by the Company.

3.4 Capitalization.

(a) As of immediately prior to the Closing, the issued and outstanding Equity Interests of the Company consists solely of 10,000 shares of common stock of the Company, and except for such shares of common stock, there are no other Equity Interests of any class, series or kind issued, outstanding or reserved for issuance. Schedule A set forth a true, correct and complete list of all of the record and beneficial holders of the Company Shares and the number of Company Shares he, she or it holds. All of the Company Shares have been validly issued to the Sellers by the Company and are fully paid and non-assessable. The Company Shares (i) are all owned of record and beneficially by the Sellers, free and clear of any Liens, (ii) were not issued in violation of any preemptive or similar rights or rights of first refusal, including any of the foregoing created by statute or Organizational Documents of the Company or any Contract to which the Company is a party or by which it is bound, and (iii) were issued in compliance with all applicable Laws, including all federal and state securities Laws. Upon the consummation of the Transaction, the Purchaser will acquire good and valid title to all of the Company Shares, free and clear of any Liens.

(b) There are no (i) outstanding subscriptions, options, warrants, phantom equity, equity appreciation rights, convertible securities, rights, calls, demands, commitments, conversion rights, rights of exchange, plans or other Contracts of any character providing for the purchase, issuance or sale of any capital stock or other Equity Interests of the Company or (ii) voting trusts, equityholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of Equity Interests of the Company.

3.5 Subsidiaries; Investments.

(i) The Company does not currently own or control, directly or indirectly, any Equity Interests in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. The Company is not a participant in any joint venture, partnership or similar arrangement.

(b) The Company does not own, control or otherwise hold (nor has ever owned, controlled or otherwise held), directly or indirectly, any Investments in any corporation, limited liability company, partnership, joint venture, other business entity or Person.

3.6 Financial Statements.

(a) The Company has made available to the Purchaser complete copies of (i) the unaudited balance sheets of the Company for the fiscal years ended December 31, 2019 and December 31, 2020 and the unaudited statements of income, retained earnings and cash flows of the Company for the years then ended, in each case, certified by the Company's chief financial officer (or other comparable officer), and (ii) the unaudited balance sheet of the Company for the eleven (11) month period ended November 30, 2021 and the separate unaudited statements of income, retained earnings and cash flows of the Company for the eleven (11) month period then-ended (the "Interim Financial Statements") (the financial statements contemplated by clauses (i), (ii) and (iii), collectively, the "Financial Statements"). The balance sheet of the Company as of December 31, 2020 is referred to herein as the "Balance Sheet" and the date thereof as the "Balance Sheet Date." The balance sheet of the Company as of November 30, 2021 is referred to herein as the "Interim Balance Sheet" and the date thereof as the "Interim Balance Sheet Date." The Financial Statements have been prepared and derived in good faith from the books and records of the Company. The Financial Statements fairly and accurately present the financial condition and results of operations of the Company as of the respective dates and for the respective periods indicated therein.

(b) The Company maintains accurate books and records reflecting its transactions, cash position, assets, and liabilities. To the Company's Knowledge, there is no fraud, suspected fraud or allegation of fraud affecting the Company by management of the Company, employees who have significant roles in the Company internal controls or policies or other employees of the Company whose fraud could have a material effect on the Financial Statements.

(c) All of the accounts receivable of the Company are valid and undisputed claims, are subject to no set-off or counterclaim other than normal cash discounts accrued in the, and, to the Knowledge of the Company, are fully collectible in the normal course. Since the Balance Sheet Date, the Company has collected its accounts receivable in the ordinary course of business and in a manner which is consistent with past practices and has not accelerated any such collections. The Company does not have any accounts receivable or loans receivable from any Person which is affiliated with it or any of its directors, officers, members, managers, employees or shareholders.

(d) All accounts payable and notes payable of the Company arose in bona fide arm's length transactions in the ordinary course of business and no such account payable or note payable is delinquent in its payment. Since the Balance Sheet Date, the Company has paid its accounts payable in the ordinary course of business and in a manner which is consistent with past practices. The Company does not have any accounts payable or loans payable to any Person which is affiliated with it or any of its directors, officers, members, managers, employees or equityholders.

3.7 Undisclosed Liabilities; Indebtedness.

(a) Except as set forth on Schedule 3.7(a) of the Company Disclosure Schedule, the Company does not have any liabilities, debts, obligations, claims against it or commitments of any nature or type (whether known or unknown, absolute, accrued or unaccrued, contingent, asserted or unasserted or otherwise), except (i) those disclosed, set forth on or reserved against the Interim Financial Statements and (ii) those incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date and that are not, individually or in the aggregate, material (in type or amount) to the business of the Company. Additionally, the Company has not assumed, guaranteed, endorsed or otherwise become directly or contingently liable on or for any Indebtedness or other payment obligation of any other Person.

(b) Schedule 3.7(b) sets forth a true, correct and complete summary of all Indebtedness of the Company, including, with respect to each item of Indebtedness, the (i) amount of outstanding obligations thereunder, (ii) the creditors, obligors and payees, (iii) the entity that is the debtor, guarantor, securing party, credit support party or other obligor, (iv) the nature of such Indebtedness, (v) the periodicity and amounts of any periodic payments that are required to be made thereunder, and (vi) the maturity or due date. The Company has provided a true, correct and complete copies of all Contracts governing the terms of all such Indebtedness. The Company is not, and never have been, in breach or default of any of the terms governing any Indebtedness. The Company has satisfied all of its payment obligations with respect to such Indebtedness as such payment obligations have matured or become due.

3.8 Absence of Certain Changes. Since the Balance Sheet Date, (i) there have not been any events, occurrences, changes, developments or circumstances that (A) have had, or that would reasonably be expected to, individually or in the aggregate, have a Company Material Adverse Effect or (B) that would, or would reasonably be expected to, prevent or delay the performance of this Agreement or any other Transaction Document, by the Company and (ii) the business of the Company has been conducted in all material respects in the ordinary course of business consistent with past practice. Except as set forth on Schedule 3.8, since the Balance Sheet Date, there has not been any:

(a) amendment or modification of the Company's Organizational Documents;

(b) split, combination or reclassification of any Equity Interests of the Company;

(c) issuance, grant, sale, delivery or agreement or commitment to issue, grant, sell or deliver, or other disposition of (or any authorization or commitment to do any of the foregoing) any of the Equity Interests of the Company, or grant of any options, warrants or other rights to purchase or acquire (including upon conversion, exchange or exercise) any of the Company's Equity Interests, or other agreements or commitments of any character obligating the Company to issue, grant, sell or deliver any Equity Interests in the Company;

(d) declaration, set aside or payment of any dividends or distributions on or in respect of any of the Company's Equity Interests or redemption, purchase or acquisition of the Company's outstanding Equity Interests;

(e) merger or consolidation with, or any acquisition of a material or substantial portion of the assets or Equity Interests of, any business or Person (including the Company);

(f) change in any method of accounting or accounting practice of the Company, except as required by applicable Law;

(g) any new, change in or revocation of any Tax election (including without limitation, an entity classification election pursuant to Treasury Regulations Section 301.7701-3); settlement or compromise of any claim, notice, audit report or assessment in respect of Taxes; change in any annual Tax accounting period; adoption or change in any method of Tax accounting; filing of any amended Tax Return; entrance into any Tax allocation, sharing or indemnity agreement or any closing agreement relating to any Tax; surrender of any right to claim a material Tax refund; consent to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment; or initiation of any voluntary disclosure, amnesty or similar program with respect to Taxes or entrance into any agreement with any Tax Authority in connection therewith;

(h) incurrence, assumption, or guarantee of any Indebtedness, or the subjecting of the Company's material assets to a Lien (other than Permitted Liens), by the Company, except unsecured current obligations and liabilities incurred in the ordinary course of business consistent with past practice;

(i) sale, transfer, lease, sublease, license, or otherwise dispose of any of the assets or properties of the Company, except in the ordinary course of business consistent with past practice (provided that none of such actions, individually or in the aggregate, were, or would reasonably be expected to be, material to the business of the Company);

(j) any (i) increase in the compensation or benefits of any of the directors, managers or officers, or increase in the aggregate compensation or benefits of any of the consultants, employees or other individual service providers of the Company, (ii) payment to any current or former director, manager, officer, consultant, employee or other individual service provider of the Company (collectively, “Personnel”) of any compensation or benefit not required under any Benefit Plan, other than the payment of cash compensation in the ordinary course of business consistent with past practice, (iii) resignation or termination of any director, manager, officer or Key Employee of the Company, (iv) adoption, establishment, entry into, amendment, modification or termination of any Benefit Plan (except as may be required by applicable Law) or any collective bargaining agreement or other agreement or Contract with any labor union, works council or other labor organization, (v) grant of any severance, change in control, retention, termination or similar compensation or benefits to any Personnel, except pursuant to a Benefit Plan previously in effect, (vi) entry into any trust, annuity or insurance Contract or any action to fund or otherwise secure the payment of any compensation or benefit for any Personnel or (vii) action to accelerate the time of vesting or payment of any compensation or benefit for any Personnel;

(k) any entry into, amendment, modification or renewal of any Contract regarding employment, consulting, severance or similar arrangements with any of the Company’s officers, directors or Key Employees;

(l) cancellation or termination of any Insurance Policies or allowance of any coverage under any Insurance Policies to lapse;

(m) termination, cancellation, renewal (other than automatic renewal), or agreement to any amendment in or waiver under any Material Contract or other Contract material to the business and operations of the Company;

(n) settlement or compromise, or agreement to settle or compromise, any action, suit, claim, investigation or other legal proceedings pending or threatened against the Company, except for any such settlement or compromise which was not (and could not reasonably be expected to be) material to the business, operations or financial condition of the Company, both prior to and after the Closing;

(o) incurrence or commitment to any capital expenditures other than in the ordinary course of business consistent with past practice;

(p) made any loan or advance to or any other Investment in any Person;

(q) purchase, sale, assignment, transfer, license, lease, sublease, abandonment or other disposition of any Intellectual Property or Technology, other than non-exclusive licenses granted to end user customers in the ordinary course of business on the Company’s unmodified standard form of distributor agreement;

(r) entry into any transaction or arrangement with, or for the benefit of, any Affiliate of the Company or any of the directors, former directors, officers or equityholders of any Affiliate of the Company; or

(s) any agreement or commitment by the Company to do any of the foregoing, or any action or omission by the Company that would result in any of the foregoing.

3.9 Material Contracts.

(a) Schedule 3.9(a) sets forth a list of the following Contracts as of the date hereof to which the Company is a party to or by which it is bound or any of its assets are subject (collectively, the “Material Contracts”):

(i) Contracts with each current officer, director, or current employee of the Company, who receives annual base compensation (excluding bonus and other benefits) in excess of \$100,000;

(ii) collective bargaining Contracts or Contracts with any labor organization, union, works council or association to which the Company is a party;

(iii) Contracts with any current or former officer, director, employee, consultant or equityholder of the Company (other than Contracts covered by clause (i) above);

(iv) Contracts with any employee or other service provider of the Company that provide for severance, termination or similar payments or change in control, retention, or similar payments contingent upon or triggered by the consummation of the Transaction;

(v) Contracts relating to any merger or consolidation with, any acquisition of any assets outside the ordinary course of business of, or any investment in, any business or Person (including the Company), in each case, (A) since inception, or (B) under which the Company has any outstanding obligations, rights, or liabilities;

(vi) Contracts for or relating to the incurrence, guaranty or existence of Indebtedness (including guarantees), or the making of any material loans to another Person;

(vii) Contracts which involve payment of more than \$10,000 in the aggregate for any individual Contract for the year to date as of November 30, 2021, or that are expected to involve the payment of more than \$10,000 in the aggregate for any individual Contract for any of the fiscal years 2021 and 2022, in each case, that are not terminable by the Company without penalty on sixty (60) days’ or less notice;

(viii) each Contract for capital expenditures or the acquisition of fixed assets, in any case involving future payments by the Company in excess of \$10,000, individually or in the aggregate;

(ix) Contracts (A) containing covenants of the Company expressly prohibiting or limiting the right of the Company to compete in any line of business, including development, marketing, sale or distribution, or prohibiting or restricting its ability to conduct business in any line of business with any Person in any geographic area (including granting exclusive rights or rights of first refusal to license, market, sell or deliver any of the products or services offered by the Company), (B) that provides for “most favored customer” terms or similar terms (including such terms for pricing) or (C) with minimum purchase requirements;

(x) any lease, sublease or similar Contract with any Person under which the Company (A) is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by any Person or (B) is a lessor or sublessor of, or makes available for use by any Person, any tangible personal property owned or leased by the Company, in any such case in the foregoing clause (A) or in this clause (B) which has an aggregate future liability or receivable, as the case may be, in excess of \$10,000;

(xi) Contracts to which the Company is a party, or by which the Company is otherwise bound that: (A) (I) grant rights in Software that is accessed by (*e.g.*, running on a hosted or third-party service, etc.), incorporated or integrated into, or bundled with any Company Offerings or under which a Person has granted or agreed to grant to the Company any license, covenant, release, immunity or other right with respect to Intellectual Property or Technology that are, or are purported to be, embodied in any Company Offerings, or are otherwise material to the Company; (II) grant rights in Software used by the Company to support development or compilation of any Company Offerings; or (III) relate to Software used in the IT Systems of the Company, but excluding (for listing purposes only) (x) Open Source Software licenses, and (y) non-exclusive licenses to third-party Software that are not incorporated into or used in the development, manufacturing, testing, distribution, maintenance, or support of, any Company Offering and that do not involve payments of amounts in excess of \$10,000 and are not otherwise material to the Company's business; (B) grant a license or interest (including any covenant, release, immunity or other right) in any Intellectual Property or Technology owned or purported to be owned by the Company; or (C) relate to the acquisition, transfer, use, development, sharing or license or grant of any other right in any material Technology or Intellectual Property;

(xii) Contracts for any partnership, joint venture, profit sharing, strategic cooperative relationship or similar arrangement;

(xiii) Government Contracts;

(xiv) Real Property Leases;

(xv) Contracts with any Material Customer or Material Supplier;

(xvi) Contracts between or among the Company, on the one hand, and the Sellers or any Affiliate of the Sellers, on the other hand;

(xvii) Contracts granting any rights purchase or acquire Equity Interests in the Company; and;

(xviii) Contracts not captured by the preceding clauses (i) through (xvii) the performance of which involves payment by or to the Company of consideration in excess of \$10,000 over the term of such Contract and which cannot be canceled by notice of sixty (60) days or fewer.

(b) As of the date hereof, the Company has delivered or made available to the Purchaser true, correct and complete copies of each Material Contract (including any amendments or modifications thereto). Except as set forth on Schedule 3.9(b), each Material Contract is in full force and effect and is a legal, valid, binding and enforceable obligation of the Company, and, to the Knowledge of the Company, of the other party or parties thereto. As of the date hereof, (i) the Company has performed in all material respects all obligations required to be performed by it to date under each of the Material Contracts, (ii) the Company is not in material breach of or default under (with or without the lapse of time or the giving of notice, or both) any Material Contract to which it is a party, and (iii) to the Knowledge of the Company, no other party to any of the Material Contracts is in material breach or default under any Material Contract. The Company has received no notice of any event or condition which (with or without the lapse of time or the giving of notice, or both) would (A) cause any material breach or default under any Material Contract, (B) give any Person the right to accelerate the maturity or performance of any grant, right or other obligation under any Material Contract, or (C) give any Person the right to cancel, terminate or modify any Material Contract. To the Knowledge of the Company, no counterparty to any Material Contract is planning to terminate, not renew or otherwise cease to perform such counterparty's obligations under any Material Contract.

3.10 Title to Assets.

(a) The Company has good and valid title to, or otherwise has the right to use pursuant to a valid and enforceable lease, license or similar contractual arrangement, all real and personal property and other assets (i) reflected in the Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice and/or (ii) necessary to conduct the business and operations of the Company as currently conducted and as contemplated to be conducted. All such properties and assets are free and clear of any Liens, other than Permitted Liens.

(b) The equipment, furniture, machinery, structures, fixtures and other tangible personal property of the Company (collectively, the "Tangible Company Properties") are adequate for the uses to which they are being put, have no material defects, are in good operating condition, and have been reasonably maintained consistent with normal industry standards, except for (i) ordinary wear and tear and (ii) such Tangible Company Properties as shall have been taken out of service on a temporary basis for repairs or replacement in the ordinary course of business consistent with past practices.

3.11 Real Property.

(a) The Company does not own, and has never owned, any real property.

(b) Schedule 3.11(b) sets forth a list of all leases, subleases and occupancy agreements of real property (the “Real Property”) pursuant to which the Company is the lessee, sublessee, sublessor, or party to such agreement (individually, a “Real Property Lease”), including the street address of the applicable Real Property, the date of and legal name of each of the parties to such lease, sublease, license, sublicense or other Contract, and each amendment, modification or supplement thereto. Each such Real Property Lease is in full force and effect and is a legal, valid, binding and enforceable obligation of the Company, and, to the Knowledge of the Company, of the other party or parties thereto. With respect to each Real Property Lease and the Real Property related thereto, (i) there is no material breach or default under such Real Property Lease by the Company or, to the Knowledge of the Company, any other party thereto, (ii) no event has occurred that with or without the lapse of time or the giving of notice or both would constitute a material breach or default under such Real Property Lease by the Company or, to the Knowledge of the Company, any other party thereto, (iii) all work required to be performed under such Real Property Lease by the landlord thereunder or by the Company, as applicable, has been performed, and to the extent that the Company is responsible for the payment of such work, has been fully paid for, whether directly to the contractor performing such work or to the landlord as reimbursement therefor, (iv) the Company has not assigned, subleased, mortgaged, deeded in trust or otherwise transferred or encumbered such Real Property Lease or the Real Property related thereto or any interest therein, (v) the Company has not received any written notice of any pending or threatened condemnation proceedings in connection with any parcel of Real Property and, to the Knowledge of the Company, no eminent domain or condemnation action is pending or threatened, (vi) the Company's current use of the Real Property does not violate in any material respect any restrictive covenant of record that affects any of the Real Property, (vii) the Company has not received any notice of a nonconforming use under or a violation of any building, zoning, subdivision and other land use or similar Laws, regulations and ordinances with respect to any Real Property and (viii) the Company has a good and valid leasehold interest in each parcel of real property that is subject to such Real Property Lease and is in possession of the properties purported to be leased or licensed under such Real Property Lease. The Company enjoys peaceful and undisturbed possession of, all Real Property, free and clear of all Liens, other than Permitted Liens.

(c) The Company has delivered to the Purchaser accurate and complete copies of the Real Property Leases, in each case, as amended or otherwise modified and in effect, together with extension notices and other material correspondence, lease summaries, notices or memoranda of lease, estoppel certificates and subordination, non-disturbance and attornment agreements related thereto. Each Real Property Lease is unmodified and represents the entire agreement between the Company and the applicable landlord.

3.12 Intellectual Property.

(a) Company Offerings. Schedule 3.12(a) accurately identifies and describes, as of the date hereof, each Company Offering.

(b) Registered IP. Schedule 3.12(b) sets forth a list and description of all material unregistered Marks included in the Company Intellectual Property. No issuance or registration obtained and no application filed by the Company for any Intellectual Property has been cancelled, abandoned, allowed to lapse or not renewed, except where the Company has, in its reasonable business judgment, decided to cancel, abandon, allow to lapse or not renew such issuance, registration or application.

(c) Ownership and Sufficiency of IP. The Company is the sole and exclusive owner of all right, title and interest in and to all Owned Intellectual Property and all Owned Technology, free and clear of all Liens (other than Permitted Liens). The Company has valid and continuing rights (pursuant to valid and enforceable Intellectual Property Licenses) to use, sell, license and otherwise exploit, as the case may be, all other Company Intellectual Property and Company Technology as the same is used, sold, licensed and otherwise exploited by the Company in its business as currently conducted and as currently proposed to be conducted, free and clear of all Liens (other than Permitted Liens). The Company Intellectual Property and Company Technology comprise all of the Intellectual Property and Technology used or held for use in connection with the operation of the business of the Company as currently conducted and as currently proposed to be conducted, and there is no other Intellectual Property or Technology that is material to or necessary for the operation of the business of the Company as currently conducted and as currently proposed to be conducted. The Company Intellectual Property owned by or exclusively licensed to the Company, including all Registered Company Intellectual Property, is valid (other than any pending application), subsisting and enforceable, and no Registered Company Intellectual Property has ever been found invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, except for claims rejected or refused in connection with the prosecution of any Registered Company Intellectual Property.

(d) Employee IP Agreements. Each Person who is or was involved in the creation or development of any portion of, or would otherwise have rights in or to, any Owned Intellectual Property or Owned Technology has executed a valid and enforceable written agreement with the Company that assigns to the Company all rights, title and interest in and to any and all such Intellectual Property and Technology and irrevocably waives such Person's moral rights in such Intellectual Property and Technology ("Employee IP Agreement"), and all Intellectual Property in such Person's contribution is owned exclusively by the Company. No current or former shareholder, officer, director, or employee of the Company (i) has any claim, right (whether or not currently exercisable), or ownership interest in any Company Intellectual Property or Company Technology or has excluded any Intellectual Property or Technology from his or her Employee IP Agreement, or (ii) has been named as an inventor on any patent owned by, or pending patent application by, the Company for any device, process, design or invention of any kind now used by the Company in the furtherance of its business, except for inventions that have been assigned to the Company. No employee of the Company is (A) bound by or otherwise subject to any contract restricting them from performing his or her duties; or (B) in breach of any contract with any former employer or other Person concerning Intellectual Property or confidentiality due to his or her activities as an employee of the Company.

(e) Non-Infringement of Third-Party Intellectual Property. To the Company's Knowledge, except as set forth on Schedule 3.12(e), (i) none of the following infringes, misappropriates, or violates, will infringe, misappropriate or violate, or has in the past infringed, misappropriated or violated, any Intellectual Property or Technology of any Person: (A) the operation of the business of the Company, as is currently conducted and as currently proposed to be conducted, (B) any use, practice or other exploitation of any Company Intellectual Property or Company Technology, or (C) any Company Offerings, and (ii) no claim for any such infringement, misappropriation or other violation, and no claim challenging the ownership, use, validity or enforceability of any Company Intellectual Property or Company Technology, is pending in any court or has been threatened against the Company. With respect to any third-party Software used by the Company, the Company has, in accordance with each applicable third party's Software licensing requirements, obtained the appropriate number of licenses to use such Software in the operation of the business as currently conducted and as currently proposed to be conducted. The Company has no obligation to compensate any Person for the use of any Intellectual Property or Technology and has not entered into any agreement to indemnify any other Person against any claim of infringement or misappropriation of any Intellectual Property or Technology. There are no settlements, covenants not to sue, consents, judgments, or other Orders or similar obligations that: (I) restrict the rights of the Company to use any Intellectual Property or Technology in any manner, (II) restrict the business of the Company in order to accommodate any third party's Intellectual Property or Technology, or (III) permit third parties to use the Company Intellectual Property or Company Technology.

(f) No Infringement of Company Intellectual Property. To the Company's Knowledge, except as set forth on Schedule 3.12(f), (i) no third party is infringing, misappropriating or otherwise violating any Owned Intellectual Property or the Company's rights therein or thereto, (ii) the Company has not received from or delivered to any Person written notice of a claim for any such actual, alleged, or suspected infringement, misappropriation or other violation, and (iii) the Company has not entered into any Contract to indemnify any Person against any claim of infringement, misappropriation, misuse, dilution or violation of any Intellectual Property or Technology of any other Person.

(g) Protection of Trade Secrets. The Company has taken all reasonable security measures to protect the secrecy, confidentiality and value of all Trade Secrets owned, used or held for use by the Company in its business (collectively, the "Company Trade Secrets") and any confidential information owned by any Person to whom the Company has a confidentiality obligation. No Trade Secret included in the Company Intellectual Property and no Trade Secret of any other Person material to the business of the Company has been authorized to be disclosed or has been actually disclosed by the Company to any Person other than pursuant to a written confidentiality Contract restricting the disclosure and use thereof. Each employee, consultant and contractor of the Company and any other Person with access to any Company Trade Secrets has entered into a written non-disclosure Contract with the Company in a form made available to Purchaser prior to the date hereof, and, to the Knowledge of the Company, there has not been any breach by any party to such non-disclosure Contracts of any such non-disclosure Contracts.

(h) Company Software. None of the Source Code for Software owned by or developed by or for the Company ("Company Software") has been licensed or provided to, or used or accessed by, any Person other than employees, consultants and contractors of the Company that are subject to written confidentiality obligations with respect to such Source Code or related materials. The Company is not a party to any Source Code escrow Contract or any other Contract (or a party to any Contract obligating the Company to enter into a Source Code escrow Contract or other Contract) requiring the deposit of any Source Code or related materials for any Company Software. Company Software and Company Offerings perform in accordance with the applicable specifications therefor and are free from any defect, bug, virus, malicious code, or programming, design or documentation error that would have a material effect on the operation or use of the Company Software or Company Offerings. The Company is in material compliance with the terms and conditions of all licenses for the Open Source Software. Except as set forth in Schedule 3.12(h), the Company has not: (i) incorporated Open Source Software into, or combined or linked Open Source Software with, the Company Software or Company Offerings; (ii) distributed Open Source Software in conjunction with any Company Software or Company Offerings; or (iii) used Open Source Software to develop, distribute or provide the Company Software or Company Offerings, in such a way that, with respect to the foregoing clause (i), (ii) or (iii): (A) creates, or purports to create any obligation for the Company with respect to any Company Intellectual Property (other than the underlying Open Source Software); (B) revokes, or purports to revoke, the license of any Intellectual Property embodied by the Open Source Software if the Company asserts any Intellectual Property owned by the Company against any Person; or (C) grants, or purports to grant, to any third party, any rights or immunities under any Owned Intellectual Property (including using any Open Source Software with respect to the foregoing clause (i), (ii) or (iii)) that require, as a condition of use, modification and/or distribution of such Open Source Software that other Software incorporated into, derived from or distributed with such Open Source Software be (1) disclosed or distributed in source code form, (2) be licensed for the purpose of making derivative works, or (3) be redistributable at no charge).

(i) Malicious Code. The Company Offerings do not contain any “virus”, “worm”, “time bomb”, “vulnerability”, “key-lock”, “back door”, “drop dead device”, “Trojan horse”, “spyware”, or “adware” (as such terms are commonly understood in the Software industry) or any other code designed or intended to have any of the following functions: (i) disrupting, disabling, harming, or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed, or (ii) compromising the privacy or data security of a user or damaging or destroying any data or file without the user’s consent (collectively, “Malicious Code”). The Company implements industry standard measures designed to prevent the introduction of Malicious Code into the Company Software and Company Offerings, including firewall protections and regular virus scans.

(j) All Company Offerings: (i) comply in all material respects with all applicable Laws and industry standards; and (ii) materially conform to all applicable contractual commitments, express and implied warranties (to the extent not subject to legally effective express exclusions thereof), representations and claims in packaging, labeling, advertising, and marketing materials, and applicable specifications, user manuals, training materials, and other published documentation. To the Knowledge of the Company, none of the Company Offerings contain any bug, defect, or error that materially adversely affects, or could reasonably be expected to materially adversely affect, the functionality, or performance of such Company Offerings.

(k) Funding Sources. No government funding, facilities or personnel of any university, college, other educational institution or research center or funding from governmental or academic third parties were used in the development of Owned Intellectual Property or Owned Technology. No current or former employee, consultant or contractor of the Company that contributed to the creation or development of any Owned Intellectual Property or Owned Technology has performed any services for any government or any university, college, other educational institution or research center during a period of time during which such employee, consultant or contractor was also performing services for the Company in a manner that may give rise to any Intellectual Property ownership claims by such government, university, college, or other educational institution or research center with respect to any of the Owned Intellectual Property or Owned Technology.

(l) Effect of Transaction. The consummation of the Transaction will not conflict with or result in the loss, forfeiture or impairment of any right of the Company to own, use, practice or otherwise exploit any Company Intellectual Property or Company Technology. Neither this Agreement nor any Transaction will result in the grant by the Company to any Person of any ownership interest or other right with respect to any Company Intellectual Property or Company Technology or any Intellectual Property or Technology owned or licensed by the Company or any of its Affiliates pursuant to any Contract to which the Company is a party or by which any assets or properties of the Company is bound.

(m) IT Systems. The computer systems, Software, servers, network equipment and other computer hardware and information technology equipment owned, leased or licensed by the Company (collectively, the "IT Systems") (i) are adequate and sufficient for the operations of the Company and (ii) do not contain any Malicious Code. The Company (A) has taken reasonable measures to preserve and maintain the performance, security and integrity of the IT Systems (and all software, information or data stored thereon), and (B) maintains reasonable documentation regarding all IT Systems, their methods of operation and their support and maintenance. Since inception there has been no failure with respect to any IT Systems that has had a material effect on the operations of the Company and, to the Knowledge of the Company, there has been no unauthorized access to or use of any IT Systems. The Company has implemented commercially reasonable data backup, data storage, system redundancy and disaster avoidance and recovery procedures, in each case, consistent with applicable Law and customary information security and privacy practices.

3.13 Data Privacy and Security.

(a) The Company has complied and is in compliance in all material respects with all applicable Privacy Laws, privacy rights of third parties, contractual obligations and Privacy Policies pertaining to privacy and Personal Information, and the Processing thereof (collectively, "Privacy Commitments"). The Company has not received any written notice that is or has been in breach of any Privacy Commitment to limit its use of, secure or otherwise safeguard Personal Information and no such breach has occurred within the applicable statute of limitations for a claim arising out of such a breach.

(b) Privacy Policies. True and correct copies of all Privacy Policies and all customer or other third-party privacy policies with which the Company is obligated to comply have been made available to Purchaser. The Company has made disclosures to and obtained consents from third Persons required by applicable Privacy Laws, and none of such disclosures made or contained in any Privacy Policy or in any such materials has been inaccurate, misleading, or deceptive or in violation in any material respect of any applicable Privacy Laws. No action is pending and, to the Knowledge of the Company, no Person has threatened to commence any action concerning any claim that the Company has violated any Privacy Law in connection with, or relating to, any Personal Information or the Processing of Personal information by the Company.

(c) The Company does not sell, rent or otherwise make available to any Person any Personal Information, except in a manner that complies in all material respects with the applicable Privacy Laws and Privacy Policies. The execution, delivery and performance of this Agreement and the Transaction comply, and will comply, in all material respects, with all Privacy Laws and the Privacy Policies of the Company. Following the Closing Date, the Company will continue to be permitted to collect, store, use and disclose Personal Information held by the Company on terms identical to those in effect as of the date of this Agreement and to the same extent the Company would have been able to had the Transaction not occurred.

(d) To the extent that the Company Processes any financial account numbers (such as credit cards, bank accounts, PayPal accounts, debit cards), passwords, CCV data, or other related data, the Company has implemented information security procedures, processes and systems that have at all times met, in all material respects, all applicable Laws related to the Processing of cardholder data, including those established by applicable Governmental Authorities, and the Payment Card Industry Standards Council (including the Payment Card Industry Data Security Standard).

(e) Protection and Processing of Company Data. The Company has established and maintains appropriate technical, physical, administrative and organizational policies, measures and security systems and technologies consistent with industry standards and in compliance with data security requirements under applicable Privacy Laws that ensure that Company Data is protected against unauthorized access, use, modification, disclosure, misuse, or accidental or unlawful Processing. The Company has not received any written complaint, proceeding, investigation (formal or informal) or claim against, the Company, by any private party, data protection authority, the Federal Trade Commission, or any other Governmental Authority, foreign or domestic, with respect to the collection, use, retention, disclosure, transfer, storage, security, disposal, or other Processing of Company Data. No breach, security incident or violation of any data security policy in relation to Company Data has occurred, there has been no unauthorized or illegal Processing of any Company Data, and no event or circumstance has occurred or arisen in which Privacy Laws would require the Company to notify a Governmental Authority of a data security breach, security incident or violation of any data security policy. The Company does not transfer Personal Information out of the European Economic Area.

3.14 Legal Proceedings; Orders. (a) There are, and since inception have been, no Legal Proceedings pending or, to the Knowledge of the Company, threatened in writing, against, or otherwise affecting, the Company or the Company's properties or assets, and (b) there are no outstanding Orders against the Company, in each case of clauses (a) and (b) which (i) would, individually or in the aggregate, result in (A) Losses to the Company in excess of \$10,000 or (B) injunctive relief, specific performance or other non-monetary obligation against the Company or (ii) challenges or seeks to prevent, enjoin or otherwise delay or adversely affect the Transaction. None of the assets of the Company is subject to any Order that (I) does, or could reasonably be likely to, materially impair the Company's ability to operate its business in the ordinary course consistent with past practice following the Closing or (II) would affect the legality, validity or enforceability of this Agreement or any other Transaction Document to which the Company is a party or the consummation of the Transaction. The Company does not have any claims or other Legal Proceedings or Orders against any of the Sellers or their respective Affiliates. Neither the Company nor any manager, director, officer, Key Employee or member or other equityholder of the Company, in his or her or its capacity as such, is, to the Knowledge of the Company, a party to or in default with respect to any Order of any court, commission, board or other Governmental Authority.

3.15 Compliance with Laws; Permits.

(a) (i) The Company is, and since inception, has been, in compliance with all Laws or Orders applicable to its business, properties, assets and/or operations; (ii) the Company has not received any written (or to the Knowledge of the Company, oral) notice of, or been charged by, a Governmental Authority asserting or alleging any violation of any applicable Law or Order; (iii) the Company is not, nor has it ever been, the subject of any pending or, to the Knowledge of the Company, threatened investigation or action of, or by, any Governmental Authority with respect to any actual or alleged violation of or non-compliance with any Law or Order; (iv) no event has occurred or circumstance exists that (with or without notice or lapse of time, or both) (A) would constitute or result in a violation by the Company of, or a failure on the part of the Company to comply in any material respect with, any Law or Order or (B) would give rise to any obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any remedial action of any nature and (v) since inception, the Company has not entered into or been subject to any Order with respect to any aspect of the business, affairs, properties or assets of the Company or received any request for information, notice, demand letter, administrative inquiry or formal or informal complaint or claim from any Governmental Authority or other regulatory agency with respect to any aspect of the business, affairs, properties or assets of the Company.

(b) None of the shareholders, partners, members, managers, officers or directors of the Company since inception, has been (i) subject to voluntary or involuntary petition under the federal bankruptcy Laws or any state insolvency Law or the appointment of a receiver, fiscal agent or similar officer by a court for his or her business or property; (ii) convicted in a criminal proceeding or named as a subject of a pending criminal proceeding (excluding traffic violations and other minor offenses); (iii) subject to any Order (not subsequently reversed, suspended or vacated) of any court of competent jurisdiction permanently or temporarily enjoining him or her from, or otherwise imposing limits or conditions on his or her, engaging in any securities, investment advisory, banking, insurance or other type of business or acting as an officer or director of a public company; or (iv) found by a court of competent jurisdiction in a civil action or by the Securities and Exchange Commission or the Commodity Futures Trading Commission to have violated any federal or state commodities, securities or unfair trade practices law, which such judgment, finding or other Order has not been subsequently reversed, suspended, or vacated.

(c) Schedule 3.15(c)(i) sets forth each Permit (and applications therefor) obtained by the Company which is required (or otherwise necessary) for the conduct and operation of the business of the Company as presently conducted in the ordinary course of business consistent with past practice and as currently contemplated to be conducted together with the name of the Governmental Authority issuing such Permit. Except as set forth on Schedule 3.15(c)(ii), the Company has obtained all Permits that are required for the operation of its business as presently conducted in the ordinary course of business consistent with past practice and as currently contemplated to be conducted. No suspension, cancellation or termination of any Permits required by any Governmental Authority to permit the business to be conducted as presently conducted in the ordinary course of business consistent with past practice and as currently contemplated to be conducted is threatened or imminent that would reasonably be expected to, individually or in the aggregate, have a Company Material Adverse Effect. Each Permit held by the Company that is required (or otherwise necessary) for the conduct of the operation of the business is valid, binding and in full force and effect. All such Permits are valid and in full force and effect, and the Company is not in material default or violation (and, to the Knowledge of the Company, no event has occurred which, with notice or the lapse of time or both, would constitute a material default or violation) of any term, condition or provision of any material Permit to which it is a party.

(d) Since inception, neither the Company nor any of its Representatives has offered or given, and to the Knowledge of the Company, no Person has offered or given on their behalf with respect to the business or operations of the Company, anything of value to: (i) any official, member, employer or customer of a Governmental Authority, any political party or official thereof, or any candidate for political office; (ii) any customer or member of any government; or (iii) any other Person, in any such case while knowing or having reason to know that all or a portion of such money or thing of value may be offered, given or promised, directly or indirectly, to any customer, member of such government or candidate for political office, in each case, with the intent of obtaining any improper advantage, affecting or influencing any act or decision of any such Person, assisting the Company in obtaining or retaining business for, or with, or directing business to, any Person, or constituting a bribe, kickback or illegal or improper payment to assist the Company in obtaining or retaining business, or taken any other action in violation of, where applicable, the anti-bribery provisions of the FCPA, the U.K. Bribery Act 2010 or other Laws by other countries implementing the Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Officials or other applicable anti-corruption, anti-bribery, recordkeeping and internal controls Laws. The Company has not been subjected to any investigation by a Governmental Authority for violation of any applicable Anti-Corruption Laws. The Company has not conducted or initiated any internal investigation or made a voluntary, directed, or involuntary disclosure to any Governmental Authority regarding any alleged act or omission arising under or relating to any noncompliance with any Anti-Corruption Law. The Company has not received any notice, request or citation for any actual or potential noncompliance with any Anti-Corruption Law. The Company has not implemented policies, procedures and controls reasonably designed to ensure compliance with applicable Anti-Corruption Laws.

(e) Since inception, the Company has not been the subject of or otherwise involved in investigations, litigation, voluntary or directed disclosures to, or enforcement actions by any Governmental Authority or other legal proceedings with respect to any actual or alleged violations of Sanctions, or Export Controls, or has been given written notice that it is the subject of any investigation, inquiry or enforcement proceedings by any Governmental Authority regarding any offense under Sanctions or Export Controls in relation to the business of the Company, and no such investigation, inquiry or actions have been threatened in writing or are pending. Neither the Company nor, any director, officer, or, to the Knowledge of the Company, senior Personnel of the Company is a Sanctioned Person. Since inception, the Company and each of its directors (or equivalent), officers (or equivalent), and senior Personnel has acted at all times in compliance with, and is currently in compliance with, all applicable Sanctions and Export Controls in all material respects. Since inception, the Company has secured and maintained all necessary Permits, registrations, agreements or other authorizations, including amendments thereof pursuant to Export Controls or Sanctions and maintained in place and implemented controls and systems that are reasonably intended to ensure compliance with applicable Sanctions and Export Controls. Neither the Company nor any director, officer, or senior Personnel of the Company is a Sanctioned Person or is subject to debarment or any list-based designations under the Export Controls.

3.16 Environmental Matters.

(a) Except as set forth in the Environmental Reports:

(i) There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened against the Company relating to the compliance of the Company with, or the liability of the Company under, any Environmental Laws or relating to any real property currently or formerly leased by the Company, which, if adversely determined, would reasonably be expected to have an adverse effect on the Company in any material respect.

(ii) The Company is and has always been in compliance in all material respects with all Environmental Laws applicable to its business or operations.

(iii) The Company has obtained, maintained and possesses all Permits that are required (or otherwise necessary) under Environmental Laws for the operation of its business as presently conducted in the ordinary course of business consistent with past practice and as currently contemplated to be conducted (collectively, the "Environmental Permits"), and the Company is not in default or violation of any term, condition or provision of any Environmental Permit. True, correct and complete copies of all Environmental Permits that are in the possession or control of the Company, or any of its consultants or Representatives, have been provided (or otherwise made available) to Purchaser. Such Environmental Permits constitute all of the Environmental Permits required to be possessed by the Company under Environmental Laws to conduct the business and operations of the Company as currently being conducted in the ordinary course of business consistent with past practice and as currently contemplated to be conducted.

(iv) No Company has released, generated, manufactured, transported, treated, stored or disposed of any Hazardous Substances except in a manner that has not resulted, nor would reasonably be expected to result, in any material violation of any Environmental Law or that will otherwise require reporting, investigation, cleanup or remediation of any kind under any applicable Environmental Law.

(v) The Company has not received any notice of a Legal Proceeding or Order alleging that the Company is in material violation of or has any material liability, whether directly or indirectly, for cleanup or remediation of Hazardous Substances under any Environmental Law, nor is the Company aware of the basis for such a notice.

(vi) The Company has not (A) entered into or agreed to any Order requiring compliance by the Company with any Environmental Law or the investigation or cleanup of Hazardous Substances, or (B) assumed any liability of any Person for cleanup, compliance or required, capital expenditures or any other action in connection with any Legal Proceeding under or relating to any Environmental Law.

(b) The Company does not possess any material environmental assessments, reports, or audits that relate to the Company's compliance with Environmental Laws or the environmental condition of the Real Property (collectively, the "Environmental Reports").

3.17 Personnel Matters.

(a) The Company is not a party to any labor, works council or collective bargaining agreement or Contract with any labor union, works council or other labor organization in respect of wages, hours, working conditions or the representation of employees. To the Knowledge of the Company, no labor organization, union, works council or group of employees has made a demand for recognition, and there are no representation proceedings or petitions seeking a representation proceeding presently pending or, to the Knowledge of the Company, threatened to be brought or filed, with a labor relations tribunal in any applicable jurisdiction with respect to any employees of the Company. There is no organizing activity involving the Company pending or, to the Knowledge of the Company, threatened by any labor organization, union, works council or group of employees purporting to represent any employees of the Company.

(b) (i) There are currently no, and there have never been any, strikes, work stoppages, work slowdowns, lockouts, picketing or other similar material labor activities or disputes pending or, to the Knowledge of the Company, threatened against the Company, and (ii) there are no unfair labor practice charges, suits, claims, investigations, grievances or complaints pending or, to the Knowledge of the Company, threatened by or on behalf of any employee or service provider or group of employees or service providers of the Company against the Company before a Governmental Authority. The Company is not materially delinquent in payments to any of its Personnel for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for the Company as of the date hereof or amounts required to be reimbursed to such Personnel.

(c) The Company is in compliance with all Laws relating to labor and employment in all material respects, including all such Laws relating to eligibility to legally be employed, wages and hours, benefits, fair employment practices (including discrimination, harassment, and retaliation), civil rights, veterans' rights, immigration, collective bargaining, plant closing and mass layoffs, safety and health, workers' compensation, disability rights or benefits, leaves of absence, equal pay, proper classification of employees as exempt and non-exempt, as employees and partners and as employees and independent contractors. The Company has withheld and paid to the appropriate Governmental Authority or is holding for payment not yet due to such Governmental Authority all amounts required to be withheld from their respective employees and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing. There has been no "mass layoff" or "plant closing" (as defined by the Worker Adjustment and Retraining Notification Act of 1988 or applicable state Laws) with respect to the Company within the one (1) year prior to the Closing.

(d) The Company is in compliance in all material respects with the requirements of the Immigration Reform Control Act of 1986 (the "IRCA") or equivalent applicable Law. The Company has not relied upon subcontractors in violation of the IRCA and no unauthorized workers have performed services on behalf of the Company, whether as employees or employees of subcontractors.

(e) The Company has provided or made available to the Purchaser a true, correct and complete list of the current employees of the Company that includes, with respect to each such employee and service provider (to the extent permitted by applicable Law): (i) the employee's name, position held, the base salary, hourly wage or other compensation rate, as applicable, including each employee's designation as either exempt or non-exempt from the overtime requirements of the Fair Labor Standards Act; (ii) the date of hire; (iii) whether the employee is in active employment or on an approved leave of absence (including type of leave, expected return date for non-disability related leaves and expiration dates for disability leaves); (iv) visa status; and (v) accrued sick days for current calendar year.

(f) The Company has provided or made available to the Purchaser a true, correct and complete list (to the extent permitted by applicable law) of (i) all current individual independent contractors, consultants and other service providers of the Company; (ii) the location at which such independent contractors, consultants and service providers are providing services; (iii) the rate of all regular, bonus or any other compensation payable to such independent contractors, consultants and advisors; and (iv) the start and termination date of any agreement binding any Person that currently has a consulting or advisory relationship with the Company or any of its subsidiaries. Except as set forth in Schedule 3.17(f), all individual independent contractors, consultants and service providers to the Company can be terminated immediately and without notice or liability on the part of the Company.

(g) As of immediately prior to the Closing, each of the Key Employees is employed by the Company.

3.18 Employee Benefit Plans.

(a) Schedule 3.18(a) sets forth a complete list of all of the employment (including offer letters), pension, retirement, compensation, profit-sharing, deferred compensation, equity or equity-based compensation, employee equity ownership, health and welfare, cafeteria, medical, disability, retiree life or medical or other welfare, severance pay, retention, change in control, termination, vacation, paid time off, sick leave, bonus, fringe benefit, incentive, or other material plan, program, policy, agreement or arrangement, whether or not reduced to writing, including all “employee benefit plans” as that term is defined in Section 3(3) of ERISA (whether or not subject to ERISA) providing compensation or benefits to any current or former director, manager, officer, consultant, employee or other individual service provider (or to any dependent or beneficiary thereof) of the Company or its ERISA Affiliates, which are maintained, sponsored or contributed to (or required to be contributed to) by the Company or with respect to which the Company has any obligation or liability (whether actual or contingent) other than any plan or program required to be maintained by a Governmental Authority (collectively, the “Benefit Plans”).

(b) For each Benefit Plan, the Company has provided or made available to the Purchaser complete copies of each such plan, including the following to the extent applicable: (i) all plan documents (or, in the case of an unwritten Benefit Plan, a written description thereof), trust agreements, insurance contracts and other funding vehicles and all amendments thereto; (ii) all summary plan descriptions (and any summaries of material modifications with respect thereto); (iii) the three most recent annual reports on Form 5500 (with schedules and attachments); (iv) the most recent IRS opinion or determination letter and any pending request for such letter; (v) the most recent nondiscrimination testing results performed under the Code (including 401(k) and 401(m) tests); (vi) all non-routine filings made with a Governmental Authority and (vii) all material and non-routine correspondence with any Governmental Authority in respect of any Benefit Plan.

(c) Each Benefit Plan and related trust has been established, maintained, operated and administered in all material respects in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and all other applicable Laws. Full payment has been made, or otherwise properly accrued on the books and records of the Company, of all amounts that the Company is required, under the terms of the Benefit Plans, GAAP or applicable Law, to have paid as contributions to such Benefit Plans on or prior to the date hereof (excluding any amounts not yet due).

(d) Each Benefit Plan intended to be “qualified” within the meaning of Section 401(a) of the Code has received a favorable determination letter from the IRS or is entitled to rely on an opinion or advisory letter obtained by a pre-approved plan sponsor stating that it (or the pre-approved plan on which it is established) is so qualified, and no event has occurred (whether by action or failure to act) since the date of such determination or opinion or advisory letter that could reasonably be expected to result in the revocation of such letter. Each trust established in connection with any Benefit Plan which is intended to be exempt from federal income taxation under Section 501(a) of the Code has received a determination or opinion letter from the IRS that it is so exempt.

(e) No Benefit Plan is, and neither the Company nor any of its ERISA Affiliates maintains, contributes to, or has any obligation to contribute to, or has, within the past six (6) years, maintained, contributed to, had any obligation to contribute to or otherwise had any liability with respect to any multiemployer plan, within the meaning of Section 3(37) of ERISA, “multiple employer plan” within the meaning of Section 413(c) of the Code or “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA. No Benefit Plan is subject to Title IV of ERISA or the minimum funding standards of Section 412 of the Code or Section 302 of ERISA; and, the Company has no liability under Title IV of ERISA, contingent or otherwise.

(f) Except as set forth on Schedule 3.18(f), the execution of this Agreement or the consummation of the Transaction will not, by itself or in combination with any other event, result in the acceleration or creation of any rights to any Personnel to payments or benefits under any Benefit Plan or increases in funding of any payments or benefits under any Benefit Plan or any loan forgiveness. Neither the execution of this Agreement nor the consummation of the Transaction will result in “excess parachute payments” within the meaning of Section 280G(b) of the Code or require a “gross-up” or other payment to any “disqualified individual” within the meaning of Section 280G(c) of the Code.

(g) No event has occurred and no condition exists with respect to any Benefit Plan that could reasonably be expected to subject the Company or any ERISA Affiliate to any Tax, fine, Lien, penalty or other liability imposed by ERISA (including Title IV of ERISA), the Code or other applicable Laws. No material nonexempt “prohibited transaction” (as such term is defined in Section 406 of ERISA and Section 4975 of the Code or Section 502 of ERISA) has occurred with respect to any Benefit Plan that could reasonably be expected to result in material liability to the Company. With respect to any Benefit Plan, to the Knowledge of the Company, no event has occurred or is reasonably expected to occur that has resulted in or would reasonably be expected to subject the Company to a Tax under Section 4971 of the Code or the assets of the Company to a Lien under Section 430(k) of the Code.

(h) There are (i) no pending or threatened material actions, claims, investigations, audits or Legal Proceedings by any Governmental Authority involving any Benefit Plan, and (ii) no pending or threatened material claims (other than routine claims for benefits) or Legal Proceedings against any Benefit Plan, and no facts or circumstances exist that are reasonably likely to give rise to any such claims or Legal Proceedings.

(i) No Benefit Plan provides, and the Company has not incurred any current or projected liability in respect of, health, life or other welfare benefits subsequent to termination of employment or retirement to any current, former or retired employees or their beneficiaries except to the extent required under Section 4980B of the Code or similar applicable Law.

(j) Each Benefit Plan that constitutes in any part a nonqualified deferred compensation plan within the meaning of Section 409A of the Code has been operated and maintained in all material respects in operational and documentary compliance with Section 409A of the Code and all IRS guidance promulgated thereunder. 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 pursuant to Sections 4999 or 409A of the Code.

(k) The Company provides no compensation or benefits to any Personnel that are subject to the laws of any jurisdiction outside of the United States (any such compensation or benefits, an “International Plan”). Without limiting the foregoing provisions of this Section 3.18, with respect to each International Plan, (i) such International Plan has been maintained in all material respects in accordance with all applicable requirements and all applicable Laws, (ii) all material payments and all contributions required to have been collected in respect of such International Plan have been paid when due, (iii) no material Taxes, penalties or fees are owing or assessable under or against such International Plan and (iv) no material liability exists or reasonably could be imposed upon the Company by reason of such International Plan.

(l) Since January 1, 2020, the Company has not (A) reduced the compensation or benefits of any of its service providers or otherwise reduced the working schedule of any of its service providers, in each case for any reason relating to COVID-19, or (B) conducted any terminations, furloughs or other employee-related cost-cutting actions since January 1, 2020 related to COVID-19, including but not limited to, reducing compensation, benefits or working schedules.

3.19 Tax Matters.

(a) The Company has duly and timely filed or caused to be timely filed with the appropriate Tax Authority all Tax Returns required to be filed by, or with respect to, it. All such Tax Returns are true, complete and accurate in all material respects. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by a Tax Authority in a jurisdiction where the Company does not file a Tax Return that the Company is or may be subject to taxation by that jurisdiction with respect to Taxes that are the subject of such Tax Return. All Taxes due and owing by the Company (whether or not shown on any Tax Returns) have been timely paid and the Company has withheld or collected, and paid over to the applicable Governmental Authority as required by applicable Law, all Taxes required to have been withheld or collected and paid in connection with amounts paid or owing by or to any employee, independent contractor, creditor, equityholders of the Company or other Person.

(b) The unpaid Taxes of the Company did not, as of the Interim Balance Sheet Date, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Interim Balance Sheet (rather than in any notes thereto). Since the Interim Balance Sheet Date, the Company has not incurred any liability for Taxes outside the ordinary course of business or otherwise inconsistent with past custom and practice.

(c) No written agreement or other document waiving or extending, or having the effect of waiving or extending, the statute of limitations or the period of assessment or collection of any Taxes with respect to the Company has been entered into. The Company has not granted to any Person any power of attorney with respect to any Tax matter relating to the Company.

(d) No deficiencies for Taxes with respect to the Company have been claimed, proposed or assessed by any Tax Authority. There are no ongoing, pending or threatened audits, assessments or other actions for or relating to any liability in respect of Taxes of the Company. No adjustment that would increase the Tax liability, or reduce any Tax asset, of the Company has been made, proposed or threatened by a Governmental Authority during any audit of any taxable period which would reasonably be expected to be made, proposed or threatened in an audit of any subsequent taxable period. The Company (i) has not received or applied for a Tax ruling or entered into a closing agreement pursuant to Section 7121 of the Code (or any predecessor provision or any similar provision of state, local or foreign Law), in either case that would be binding upon the Company after the Closing Date, (ii) is not or has never been a member of any affiliated, consolidated, combined, unitary or similar group for purposes of filing Tax Returns or paying Taxes or (iii) has no any liability for the Taxes of any other Person (whether under Treasury Regulation Section 1.1502-6 or any similar provision of state, local or foreign Law, or as a transferee or successor, or pursuant to any Tax sharing, allocation or indemnity agreement or any other contractual agreements, or otherwise). The Company is not or has never been, a party to or bound by any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar Contract.

(e) There are no Liens for Taxes upon any property or asset of the Company (other than Permitted Liens).

(f) The Company has never been a party to any transaction that could give rise to (i) a reporting obligation under Section 6111 of the Code or the regulations thereunder, (ii) a list maintenance obligation under Section 6112 of the Code or the regulations thereunder, (iii) a disclosure obligation of a "reportable transaction" under Section 6011 of the Code and the regulations thereunder, or (iv) any similar obligation under any predecessor or successor law or comparable provision of state, local or foreign Law.

(g) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of (i) any installment sale or other transaction made prior to the Closing, (ii) the use of an incorrect method of accounting prior to the Closing or, any accounting method change or agreement with any Tax Authority filed or made prior to the Closing, (iii) any prepaid amount received or deferred revenue accrued prior to the Closing, (iv) any closing agreement or other agreement with a Tax Authority entered into prior to the Closing, (v) any election under Section 108(i) of the Code, or (vi) an election under Section 965 of the Code.

(h) All books and records relating to Taxes of the Company (including related work papers) have been adequately maintained for all periods for which the statute of limitations remains open.

(i) The Company has not engaged in a trade or business, had a permanent establishment (within the meaning of an applicable Tax treaty), or otherwise has become subject to Tax jurisdiction in a country other than the country of its formation.

(j) The Company is, and has been at all times, an accrual method taxpayer.

(k) The provisions of Section 197(f)(9) of the Code do not apply to any intangible asset owned by the Company.

(l) The Company has not distributed stock of another Person, or has had its stock or equity interests distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Sections 355 (or so much of Section 356 as it relates to Section 355) or 361 of the Code.

(m) The Company is an "S corporation" within the meaning of Section 1361(a) of the Code (an any analogous or similar provision of state or local Tax Law where such treatment is available) and at all times since formation, the Company has had in effect a valid election under Section 1362 of the Code (and any analogous or similar provision of state or local Tax Law where such election is available) to be classified as an S corporation. The Company has no potential liability for any Tax under Section 1374 of the Code (or any analogous or similar provision of state or local Tax Law).

(n) The Company has never taken any action or failed to take any action or knows of any fact, agreement, plan or other circumstance that would jeopardize the qualification of the exchange of the Company Shares for the Consideration Shares pursuant to this Agreement, as a "reorganization" within the meaning of Section 368(a) of the Code.

3.20 Suppliers; Customers.

(a) Suppliers.

(i) Schedule 3.20(a) sets forth (A) the twenty (20) largest suppliers, vendors, subcontractors and service providers, by aggregate dollar value of expenditures made by the Company on the goods and services provided by such suppliers, vendors, subcontractors and service providers ("Material Suppliers") for (I) the most recently completed fiscal year of the Company, and (II) the eleven (11) month period ended November 30, 2021, (B) a description of whether the goods and services provided by such Material Suppliers relate to the Biorepository Business or another line of business of the Company and (C) the date on which the term of each Material Supplier Contract expires. The Company has made available to the Purchaser a true, correct and complete copy of each Contract with a Material Supplier ("Material Supplier Contract").

(ii) Except as set forth in Schedule 3.20(a), (A) the Company has not received any notice or has any reason to believe that any of its any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company and (B) the Company's invoicing, collection, billing and transactions practices are in accordance with the terms of the applicable Material Supplier Contract and are accurately presented in all material respects in the Financial Statements.

(b) Customers.

(i) Schedule 3.20(b) sets forth (A) a list of all customers of the Company ("Material Customers") for (I) the most recently completed fiscal year and (II) the eleven (11) month period ended November 30, 2021 (B) a description of whether the goods and services provided by such Material Customers relate to the Biorepository Business or another line of business of the Company and (C) the date on which the term of each Material Customer Contract expires. The Company has made available to the Purchaser a true, correct and complete copy of each Contract with a Material Customer ("Material Customer Contracts").

(ii) Except as set forth in Schedule 3.20(b), the Company's invoicing, collection, billing and transaction practices are in accordance with the terms of the applicable Material Customer Contract and are accurately presented in all material respects in the Financial Statements.

3.21 Insurance. Schedule 3.21 sets forth a list of all current insurance policies or binders maintained by the Company and relating to the assets, business, equipment, properties, operations, employees, officers and directors of the Company (collectively, the "Insurance Policies"), all of which are in full force and effect. The coverage pursuant to the Insurance Policies is sufficient for compliance with Law and for compliance with any obligation under any Contract to which the Company is a party. The Company is not in default under any such policy or binder the effect of which would reasonably be expected to jeopardize coverage (whether generally or with respect to a specific claim) thereunder and has received no notice of cancellation of any such policy or binder. Such Insurance Policies are in full force and effect on the date of this Agreement and all premiums due on such Insurance Policies have been paid. There are no material claims by the Company pending under any of such Insurance Policies as to which coverage has been denied by the underwriters of such policies. The Company has not received notice of (a) a termination or material reduction of coverage with respect to any of such Insurance Policies, (b) a refusal of any coverage or rejection of any claim under any of such Insurance Policies, (c) a change in coverage of any of such Insurance Policies, (d) a premium audit with respect to any of such Insurance Policies, or (e) an adjustment in the amount of the premiums payable with respect to any of such Insurance Policies. The Company has made available to the Purchaser true, complete and accurate copies of all such Insurance Policies. There are currently no claims pending against the Company under any Insurance Policies covering the property, business or employees of the Company. The Company does not maintain any self-insurance or co-insurance programs.

3.22 Transaction with Related Parties. No officer, director, member, equityholder or Affiliate of the Company, or, to the Knowledge of the Company, any entity in which any such Person owns any beneficial interest, is currently a party to any transaction or Contract with the Company, other than (a) payment of compensation for employment or reimbursement of expenses to employees consistent with past practice (provided, that all Contracts related to this clause (a) have been made available by the Company to the Purchaser), and (b) Contracts which will be terminated at or prior to the Closing without any further obligation to the Company. Furthermore, no officer, director, employee, equityholder or Affiliate of the Company or, to the Knowledge of the Company, any entity in which any such Person or individual owns any beneficial interest, (i) has any direct or indirect legal interest in any asset or property used by the Company, (ii) sold, transferred, licensed (or sublicensed) or leased (or subleased), directly or indirectly, any property or services to the Company, (iii) purchased, acquired, licensed (or sublicensed) or leased (or subleased), directly or indirectly, any property or services from the Company, (iv) loaned or advanced, directly or indirectly, any money to the Company, (v) received a loan or advance from the Company or (vi) possesses, directly or indirectly, any financial interest in, or is a director, officer or employee of, any Person which is a client, supplier, customer, lessor, lessee or competitor of the Company.

3.23 Bank Accounts. Schedule 3.23 lists all bank accounts, safety deposit boxes and lock boxes (designating each authorized signatory with respect thereto) of the Company.

3.24 Brokers. Neither the Company nor any of the Sellers is obligated to pay (nor is party to any Contract relating to) any fee or other compensation to any Person for having acted, directly or indirectly, as a broker, finder, agent, investment banker or financial advisor for the Sellers or the Company in connection with the Transaction.

3.25 Full Disclosure3.26 . No representation or warranty of the Company contained in this Agreement, as qualified by the Company Disclosure Schedule, and no certificate furnished or to be furnished to the Purchasers at the Closing contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth on the Company Disclosure Schedule, each Seller, solely on behalf of himself, herself or itself and no other Seller, hereby represents and warrants to the Purchaser as follows:

4.1 Organization. [Reserved.]

4.2 Authorization. Such Seller has the requisite power and authority to execute and deliver this Agreement and each other Transaction Document to which he, she or they is a party, to perform his, her, or their obligations hereunder and thereunder and to consummate the Transaction. The execution, delivery and performance of the Transaction Documents to which such Seller is a party and the consummation of the Transaction have been duly authorized by the requisite action on the part of such Seller. Each of the Transaction Documents to which such Seller is a party has been duly and validly executed and delivered by such Seller and (assuming the due authorization, execution and delivery by the other parties thereto) each such Transaction Document, when so executed and delivered, will constitute the legal, valid and binding obligations of such Seller, enforceable against him, her or them in accordance with its terms.

4.3 Restricted Securities. Each Seller understands that the Consideration Shares have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Seller's representations as expressed herein. The Seller understands that the Consideration Shares are "restricted securities" under applicable U.S. federal and state securities Laws and that, pursuant to these Laws, each Seller must hold the Consideration Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Seller acknowledges that the Purchaser has no obligation to register or qualify the Consideration Shares for resale. Each Seller further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Consideration Shares, and on requirements relating to the Purchaser which are outside of the Seller's control, and which the Purchaser is under no obligation and may not be able to satisfy.

4.4 No Conflicts; Consents.

(a) Assuming the making of the filings and the receipt of the consents or waiting period terminations or expirations identified on Schedule 3.3(b), none of the execution, delivery and performance by such Seller of this Agreement or the other Transaction Documents to which he, she or they is a party, or the consummation of the Transaction by such Seller, requires the consent, notice or other action by any Person under, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, or gives rise to a right of termination, modification, acceleration or cancellation under any provision of (i) the certificate of formation, the certificate of incorporation, the articles of association, the bylaws, the limited liability company agreement, the partnership agreement or other comparable organizational documents, of such Seller, as applicable; (ii) any Law applicable to such Seller; or (iii) any Contract or Permit to which such Seller is a party or by which any of its properties or assets are bound.

(b) No consent, waiver, Order, approval or authorization of, or registration, declaration or filings with, or notice to, any Governmental Authority is required on the part of such Seller in connection with the execution and delivery by such Seller of this Agreement or the other Transaction Documents to which he, she or they is a party or the consummation of the Transaction by such Seller, except for any approval of a Governmental Authority identified on Schedule 3.3(b).

4.5 Title to Company Equity Interests. As of the date hereof, such Seller owns all of the issued and outstanding Equity Interests of the Company set forth under the heading "Total Number of Common Shares Owned Prior to Closing" as set forth on Schedule A attached hereto opposite the name of such Seller. Such Equity Interests of the Company have been validly issued to such Seller by the Company. Such Equity Interests of the Company are as of the date hereof owned of record and beneficially by such Seller, free and clear of any Liens. Upon consummation of the Transaction, the Purchaser will acquire good and valid title to all of the Company Shares, free and clear of any Liens.

4.6 Legal Proceedings; Orders(a) . (a) There are no Legal Proceedings pending or, to the Knowledge of such Seller, threatened, against such Seller, and (b) there are no outstanding Orders against such Seller, in each of the foregoing cases which would have, individually or in the aggregate, a material adverse effect on the ability of such Seller to consummate, or would otherwise prevent or delay such Seller from consummating, the Transaction. None of the assets of such Seller is subject to any Order that would affect the legality, validity or enforceability of this Agreement or any other Transaction Document to which such Seller is party or the consummation of the Transaction.

4.7 Investment Purpose. Each Seller is being issued the Consideration Shares solely for its own account and for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Each Seller (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Purchaser and is capable of bearing the economic risks of such investment.

4.8 Accredited Investor. Such Seller is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act and the rules and regulations promulgated thereunder. Such Seller represents he, she or they is not relying on any other party (including the Company) or any other representations or warranties of any party in making its decision to enter into this Agreement or any other Transaction Document and to consummate the Transaction. Such Seller hereby acknowledges that any future sale of the Company's Equity Interests could be at a premium or a discount relative to the portion of the Consideration Shares being paid to such Seller for its Company Shares.

4.9 Brokers. Such Seller is not obligated to pay (nor is party to any Contract relating to) any fee or other compensation to any Person for having acted, directly or indirectly, as a broker, finder, agent, investment banker or financial advisor for any of the Sellers or the Company in connection with the Transaction.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except (i) as disclosed in the Purchaser's SEC Documents 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 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 (ii) as set forth on the Purchaser Disclosure Schedule, the Purchaser hereby represents and warrants to each of the Sellers as of the Closing as follows:

5.1 Organization. The Purchaser is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. The Purchaser has the requisite corporate, company or partnership power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted. The Purchaser is qualified to do business in each jurisdiction in which the nature of its business or the location of any properties or assets owned or leased by it makes such qualification necessary, except for those jurisdictions where the failure to be so qualified would not, individually or in the aggregate, prevent the Purchaser from performing its obligations pursuant to this Agreement or any other Transaction Document to which it is a party or from consummating the Transaction.

5.2 Authorization. The Purchaser has the requisite corporate, company or partnership power and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution and delivery of the Transaction Documents to which the Purchaser is a party and the consummation of the Transaction have been duly authorized by the requisite corporate, company or partnership actions on the part of the Purchaser. Each of the Transaction Documents to which the Purchaser is a party has been duly and validly executed and delivered by the Purchaser and (assuming the due authorization, execution and delivery by the other parties thereto) each such Transaction Document, when so executed and delivered, will constitute the legal, valid and binding obligations of the Purchaser, enforceable against it in accordance with its terms.

5.3 Valid Issuance of Shares. The Consideration Shares, when issued and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under this Agreement, applicable state and federal securities Laws and Liens or encumbrances created by or imposed by a Seller. Assuming the accuracy of the representations of the Sellers in Article IV of this Agreement, the Consideration Shares will be issued in compliance with all applicable federal and state securities Laws.

5.4 No Conflicts; Consents.

(a) Except as set forth on Schedule 5.4(a) of the Purchaser Disclosure Schedule, and assuming the making of the filings and the receipt of the consents or waiting period terminations or expirations identified in Schedule 5.4(b), none of the execution and delivery by the Purchaser of this Agreement or the other Transaction Documents to which it is a party, or the consummation of the Transaction by the Purchaser, requires the consent, notice or other action by any Person under, conflicts with, violates or constitutes a default (with or without notice or lapse of time, or both) under, or gives rise to a right of termination, modification or cancellation under any provision of (i) the certificate of formation, the certificate of incorporation, the articles of association, the bylaws, the limited liability company agreement, the partnership agreement or other comparable organizational documents, of the Purchaser or any of its Affiliates; (ii) any Law applicable to the Purchaser or any of its Affiliates; or (iii) any Contract or Permit to which the Purchaser or any of its Affiliates is a party or by which any of their properties or assets are bound.

(b) Except as set forth on Schedule 5.4(b) of the Purchaser Disclosure Schedule, no approval of a Governmental Authority is required on the part of the Purchaser or any of its Affiliates in connection with the execution and delivery by the Purchaser of this Agreement or the other Transaction Documents to which it is a party or the consummation of the Transaction by the Purchaser.

5.5 SEC Filings. Other than any filings required in connection with the transactions contemplated by this Agreement, the Purchaser has timely filed with or furnished to, as applicable, the SEC all registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed or furnished by it with the SEC since July 30, 2021 (the "Purchaser SEC Documents"). True, correct, and complete copies of all the Purchaser SEC Documents are publicly available on EDGAR. As of their respective filing dates or, if amended or superseded by a subsequent filing prior to the date hereof, as of the date of the last such amendment or superseding filing (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), each of the Purchaser SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the Sarbanes-Oxley Act, and the rules and regulations of the SEC thereunder applicable to such Purchaser SEC Documents.

5.6 Legal Proceedings; Orders. (a) There are no Legal Proceedings pending or, to the Knowledge of Purchaser, threatened, against the Purchaser or any of its Affiliates, and (b) there are no outstanding Orders against the Purchaser or any of its Affiliates, in each of the foregoing cases which would, individually or in the aggregate, prevent the Purchaser from performing its obligations pursuant to this Agreement or any other Transaction Document to which it is a party or from consummating the Transaction. None of the assets of the Purchaser is subject to any Order that would affect the legality, validity or enforceability of this Agreement or any other Transaction Document to which the Purchaser is a party or the consummation of the Transaction.

5.7 Investment Purpose. The Purchaser is purchasing the Company Shares solely for its own account and for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. The Purchaser acknowledges that the Company Shares are not registered under the Securities Act or under "blue sky" Laws, and that the Company Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act or pursuant to an applicable exemption therefrom and subject to "blue sky" Laws, as applicable. The Purchaser (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Company and is capable of bearing the economic risks of such investment.

5.8 Brokers. Other than Back Bay Life Sciences Advisors, no Person has acted, directly or indirectly, as a broker, finder, agent, investment banker or financial advisor for the Purchaser or its Affiliates and no Person is entitled to any fee or commission or like payment from the Purchaser or its Affiliates in connection with the Transaction.

ARTICLE VI

COVENANTS

6.1 Information Preservation. For a period of seven (7) years following the Closing, the Purchaser shall preserve and keep, or cause to be preserved and kept, all original books and records in respect of the Company in the possession of the Purchaser, or its Affiliates, provided that in accordance with the Company's current practices, such copies may be maintained in electronic or digital form.

6.2 Certifications. The Company shall cause all certifications relating to its Biorepository Business, including (i) the certification by the Biorepository Accreditation Program offered by the College of American Pathologists and (ii) the ISO 20387 biobanking accreditation (collectively, the "Company Certifications"), to be transferred as promptly as reasonably possible after Closing to the Purchaser at the Purchaser's facilities located at 10864 Thornmint Road, San Diego, CA 92127 (the "Company Certifications Transfer"). Prior to the completion of the Company Certifications Transfer, the Company shall take any and all steps necessary to maintain the Company Certifications in good standing.

6.3 Company 401(k) Plan Termination. Prior to the Closing, the Company shall take all necessary actions to terminate the defined contribution plan sponsored by the Company or any of its Subsidiaries that includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (the "Company 401(k) Plan"), with such termination effective as of no later than the date immediately preceding the Closing Date. The Company shall provide Purchaser with a copy of any resolutions or other corporate action (the form and substance of which shall be subject to review and approval by Purchaser, which approval will not be unreasonably withheld, conditioned or delayed) evidencing such termination. Prior to and conditioned upon termination of the Company 401(k) Plan, the Company shall take any action necessary to fully vest any and all unvested amounts of the accounts of all participants in the Company 401(k) Plan. On or as soon as practicable following the Closing Date, Purchaser shall permit all employees who were eligible to participate in the Company 401(k) Plan immediately prior to its termination date and who remain in employment with the Company to participate in a defined contribution plan sponsored by the Purchaser or any of its Affiliates that includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (the "Purchaser 401(k) Plan") and shall cause the Purchaser 401(k) Plan to accept eligible rollover distributions as defined in Section 402(c)(4) of the Code (including promissory notes evidencing any outstanding loans) from such employees of their Company 401(k) Plan account balances, if elected by such employees in accordance with applicable law and the Company 401(k) Plan, except as may be prohibited by the Purchaser 401(k) Plan or to the extent accepting such rollovers would adversely affect the tax-qualified status of the Purchaser 401(k) Plan.

6.4 Release. Effective as of the Closing, each Seller, on behalf of his, her or their self, (the “Seller Releasing Parties”), hereby unconditionally and irrevocably and forever releases and discharges each current and former holder of shares of capital stock of the Company, the Purchaser and its Affiliates and each of their respective successors and assigns, and any present or former directors, managers, officers, employees or agents of such Person (each, a “Seller Released Party”), of and from, and hereby unconditionally and irrevocably waives, any and all claims, debts, losses, expenses, proceedings, covenants, liabilities, suits, judgments, damages, actions and causes of action, obligations, accounts and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract, direct or indirect, at law or in equity (collectively, the respective “Seller Released Claims”) that such party ever had, now has or ever may have or claim to have against any Seller Released Party, for or by reason of any matter, circumstance, event, action, inaction, omission, cause or thing whatsoever arising prior to the Closing (including in respect of the management or operation of the Company); provided, however, the foregoing release shall not cover (and the definition of Seller Released Claims does not include) any rights of such Seller expressly provided for in this Agreement or any of the other Transaction Documents. Each Seller, on behalf of his, her or their self, understands the significance of this release of unknown claims, and acknowledges and agrees that this waiver is an essential and material term of this Agreement. Each Seller, on behalf of his, her or their self acknowledges that Purchaser and the Company will be relying on the release and waiver provided in this Section 6.4 in connection with entering into this Agreement and that this Section 6.4 is intended for the benefit of, and to a grant a third party rights to each Seller Released Party to enforce this Section 6.4. The rights and claims waived and released by each of the Seller Releasing Parties hereunder include claims for damages, contribution and other rights of recovery arising out of or relating to any breach of contract, misrepresentation or breach of warranty, negligent misrepresentation, all other claims for breach of duty and all other claims arising under applicable Law. The foregoing notwithstanding, the release and discharge in this Section 6.4 does not extend to any rights that may accrue to any such Seller Releasing Party, or any obligations owed to such Seller Releasing Party, (i) under the explicit terms of this Agreement, certificate or other document delivered pursuant hereto, (ii) claims for salary or wages, benefits, or other rights pursuant to any employee agreements, if any, as in effect on the Closing Date (both immediately prior to, and immediately after, any amendment and restatement of such agreement that may be made as of the Closing Date), (iii) right to indemnification, exculpation or expense reimbursement in favor of, or limitation of liability of, a current or former director or officer of the Company or any of its Subsidiaries, the Company’s Organizational Documents or (iv) for any accrued and unpaid salary and other employee benefits and reimbursements in the ordinary course of business consistent with past practice. Each Seller hereby acknowledges the release by the Seller Releasing Parties and covenants and agrees that he, she or they will honor such release and will not, and will cause its respective Seller Releasing Parties not to, take any action inconsistent therewith (including commencing litigation with respect to, or directly or indirectly transferring to another Person, any released claims). Each Seller acknowledges that he, she or they has read and understands Section 1542 of the California Civil Code which reads as follows: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him, her or them, would have materially affected his, her or their settlement with the debtor or released party.” Each Seller hereby expressly waives and relinquishes all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to any claims he, she or they may have against any Seller Released Party.

6.5 Public Announcements. The Purchaser may issue a press release or public disclosure in connection with the Closing concerning this Agreement, the other Transaction Documents and/or the Transaction, the substance and form of which shall be mutually agreed upon by the holders of a majority of the Consideration Shares issued pursuant to this Agreement (the “Sellers Majority”) and the Purchaser. Thereafter, none of the Company, the Sellers Majority or the Sellers and their respective Affiliates, on the one hand, or the Purchaser, the Purchaser and its Affiliates, on the other hand, shall issue any press release or public announcement concerning this Agreement, the other Transaction Documents or the Transaction or make any other public disclosure containing or pertaining to the terms of this Agreement without obtaining the prior written approval of the Purchaser, which approval will not be unreasonably withheld, conditioned or delayed, unless, in the reasonable judgment of the Party seeking to disclose, disclosure is otherwise required by applicable Law or by the applicable rules of any stock exchange on which such disclosing Party lists securities; provided, that to the extent any disclosure is required by applicable Law or an applicable stock exchange rule, the Party intending to make such disclosure shall use commercially reasonable efforts consistent with such applicable Law or stock exchange rule to consult with the Sellers Majority or the Purchaser, as applicable, with respect to the text thereof (including providing the non-disclosing party reasonable time to comment on such release or announcement in advance of such issuance, it being understood that the final form and content of any such release or announcement, to the extent so required, shall be at the final discretion of the disclosing Party). Notwithstanding the foregoing in this Section 6.5, the Purchaser shall be entitled, without the consent of the Sellers Majority, (i) to disclose the material terms of the Transaction to its members and its and their respective Affiliates (including direct and indirect equityholders), any general or limited partners thereof, and/or (ii) to disclose to any Person for fundraising and/or marketing purposes the terms and information regarding the Company and its investment therein and the Transaction of a nature customarily provided by private equity funds with respect to their portfolio companies in connection with similar activities.

6.6 Further Assurances. Following the Closing, each of the Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the other Transaction Documents and to consummate the Transaction and to fully implement the provisions of this Agreement and the other Transaction Documents.

6.7 Sellers Majority Indemnification. Each Seller hereby agrees to indemnify the Sellers Majority (in its capacity as such), and to hold the Sellers Majority (in its capacity as such) harmless from, any and all liabilities, obligations, Losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of whatever kind which may at any time be imposed upon, incurred by or asserted against the Sellers Majority in such capacity in any way relating to or arising out of the Sellers Majority's action or failure to take action pursuant to this Agreement, the other Transaction Documents or any other document or agreement contemplated herein or therein or in connection herewith in such capacity; provided, however, that no Seller shall be liable for the payment of any portion of such liabilities, obligations, Losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from the gross negligence, bad faith or willful misconduct of the Sellers Majority.

ARTICLE VII

TAX MATTERS

7.1 Tax Returns.

(a) The Company shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns in respect of the Company that relate to taxable periods ending on or before the Closing Date that are due after the Closing Date (each a “Pre-Closing Tax Return”), and the Sellers shall pay, or cause to be paid, all Taxes due with respect to such Pre-Closing Tax Returns. All such Pre-Closing Tax Returns shall be prepared by the Company in a manner consistent with the past practices of the Company, except as otherwise required by applicable Law. The Company shall deliver at least fifteen (15) days prior to the due date (taking into account any extension) for the filing of each such Pre-Closing Tax Return that is an income Tax Return to each of the Purchaser and the Sellers Majority a draft of such Pre-Closing Tax Returns for each of the Purchaser’s and the Sellers Majority’s review and reasonable comment. The Company shall incorporate any reasonable comment that each of the Purchaser and the Sellers Majority submits in writing to the Company no less than five (5) Business Days prior to the due date of such Pre-Closing Tax Returns.

(b) The Company shall prepare and timely file, or shall cause to be prepared and timely filed, all Tax Returns in respect of the Company that relate to a Straddle Period (each a “Straddle Period Tax Return”), and the Sellers shall pay, or cause to be paid, all Taxes with respect to such Straddle Period Tax Returns that are allocable to the portion of the Straddle Period ending on the Closing Date as determined pursuant to Section 7.1(c). All such Straddle Period Tax Returns shall be prepared by the Company in a manner consistent with the past practices of the Company, except as otherwise required by applicable Law. The Company shall deliver at least fifteen (15) days prior to the due date (taking into account any extension) for the filing of each such Straddle Period Tax Return that is an income Tax Return to each of the Purchaser and the Sellers Majority a draft of such Straddle Period Tax Returns for each of the Purchaser and the Sellers Majority’s review and reasonable comment. The Company shall incorporate any reasonable comment that each of the Purchaser and the Sellers Majority submits in writing to the Company no less than five (5) Business Days prior to the due date of such Straddle Period Tax Return.

(c) The portion of any Tax that is allocable to the taxable period that is deemed to end on the Closing will be: (i) in the case of all Property Taxes, deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of the Company terminated at the close of business on the Closing Date.

7.2 Tax Contests. The Purchaser and the Company, on the one hand, and the Sellers and their respective Affiliates, on the other hand, shall promptly notify each other upon receipt by such party of written notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes or Tax Returns of the Company relating to a Pre-Closing Tax Period (any such inquiry, claim, assessment, audit or similar event, a “Tax Contest”). Any failure to so notify the other party of any Tax Contest shall not relieve such other party of any liability with respect to such Tax Contest except to the extent such party was actually prejudiced as a result thereof. The Purchaser shall control the conduct of each Tax Contest, including any settlement or compromise thereof; provided, however, that the (i) Purchaser shall keep the Sellers Majority reasonably informed of any material developments with respect to such Tax Contest, (ii) the Sellers Majority shall be entitled to participate, at the Sellers’ expense, in such Tax Contest and (iii) the Purchaser shall not settle or compromise any such Tax Contest without obtaining the prior written consent of the Sellers Majority, which consent shall not be unreasonably withheld or delayed.

7.3 Books and Records; Cooperation. The Sellers shall cooperate fully, as and to the extent reasonably requested by the Purchaser, in connection with the filing of any Tax Returns of the Company and in any audit, litigation or other proceeding with respect to Taxes. The Purchaser and the Sellers agree to furnish or cause to be furnished to the other, upon reasonable request, as reasonably promptly as practicable, such information and assistance relating to Taxes, including access to books and records, as is reasonably necessary for the filing of all Tax Returns by the Purchaser or the Sellers, the making of any election relating to Taxes, the preparation for any audit by any Tax Authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax. The forgoing Section 7.3 shall only apply to Tax Returns and Taxes as to any Pre-Closing Tax Period and any Straddle Period.

7.4 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with Transaction (including any real property transfer tax and any similar Tax) (the "Transfer Taxes") shall be paid one-half (1/2) by the Sellers and one-half (1/2) by the Purchaser when due. The Purchaser and the Sellers further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Transfer Taxes that could be imposed in connection with the Transaction.

7.5 S Corporation Status. In the event that, after the Closing, the Company's election under Section 1362 of the Code (or any analogous or similar provision of state or local Tax Law) is found to be invalid or terminated with respect to any Pre-Closing Tax Period, then the Sellers shall cooperate and use reasonable efforts to obtain from the IRS a waiver of the invalidity or terminating event on the grounds of inadvertency. In connection therewith, the Sellers shall take such steps and make such adjustments as may be required pursuant to Section 1362(f)(3) and (4) of the Code.

7.6 Intended Tax Treatment. The Purchaser, the Company and the Sellers intend that the exchange of the Company Shares for the Consideration Shares pursuant to this Agreement qualifies as a reorganization pursuant to Section 368(a) of the Code (the "Intended Tax Treatment"). This Agreement is intended to constitute, and the Parties hereby adopt this Agreement as, a "plan of reorganization" within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a). Except to the extent required by applicable Tax Law, the Parties shall file all applicable Tax Returns in a manner consistent with the Intended Tax Treatment.

7.7 Coordination. In the case of any conflict, overlap or inconsistency between this Article VII and Article VIII, this Article VII shall control as to Tax matters.

ARTICLE VIII

INDEMNIFICATION

8.1 Survival

(a) Survival Period. No representations, warranties, covenants or agreements contained in this Agreement or any Ancillary Agreement or claims relating to this Agreement or the Ancillary Agreements, the transactions contemplated hereby or thereby or the subject matter hereof or thereof shall survive the Closing, except as follows:

(i) General Representations. The General Representations shall survive the Closing until the one (1) year anniversary of the Closing.

(ii) Fundamental Representations. The Fundamental Representations shall survive the Closing until the expiration of the applicable statute of limitations.

(iii) Specified Representations. The Specified Representations shall survive the Closing until sixty (60) days after the expiration of the applicable statute of limitations.

(iv) Covenants and Agreements. The covenants and agreements that are set forth in this Agreement and any Ancillary Agreement shall survive the Closing until they have been fully performed or complied with in accordance with their terms.

(v) Pre-Closing Taxes. The matters covered by Section 8.2(a)(i)(D) shall survive the Closing until sixty (60) days after the expiration of the applicable statute of limitations.

(vi) Company Transaction Expenses. The matters covered by Section 8.2(a)(i)(E) shall survive the Closing until the expiration of the applicable statute of limitations.

(vii) Fraud. The matters covered by Section 8.2(a)(i)(E), Section 8.2(a)(ii)(D), and Section 8.3(a)(iii) shall survive the Closing until the expiration of the applicable statute of limitations

(b) Modification of Statute of Limitations. For the avoidance of doubt, the parties hereby acknowledge and agree that the survival periods set forth in this Section 8.1 are a contractual statute of limitations and any claim brought by any party pursuant to this Article VIII must be brought or filed prior to the expiration of the survival period. It is the express intent of the parties that, if the applicable survival period relating to a representation, warranty, covenant or agreement as contemplated by Section 8.1(a) is shorter than the statute of limitations that would otherwise have been applicable under Law, then the applicable statute of limitations under Law with respect to such representation, warranty, covenant or agreement shall be reduced to the shortened survival period contemplated hereby. The parties further acknowledge and agree that the time periods set forth in this Section 8.1 for the assertion of claims under this Agreement are the result of arms' length negotiation among the parties and that they intend for the time periods to be enforced as agreed by the parties.

(c) Applicability and Extension of Survival Period. No Indemnified Party shall be permitted to bring or maintain any indemnity claim under this Article VIII with respect to any matters covered by Section 8.2(a) or Section 8.3 for which the applicable survival period has expired under Section 8.1(a). Notwithstanding the foregoing, if a written claim for indemnification permitted by this Article VIII was nonetheless duly submitted prior to such survival period expiring, then the respective survival period shall be extended with respect to such claim until (i) the Final Resolution of such claim and (ii) all indemnification obligations for Losses (including Accrued Loss Interest, if any), if any, with respect to such claim shall have been satisfied and paid in full by the Indemnifying Party pursuant to this Article VIII.

8.2 Indemnification Provisions for the Purchaser's Benefit.

(a) Covered Matters. Subject to this Article VIII, from and after the Closing:

(i) Company Matters. Each Seller shall indemnify and hold harmless, severally based on his, her or its respective Pro Rata Share and not jointly (a "Seller Indemnifying Party"), the Purchaser Indemnified Parties from and against any Losses incurred or suffered by them to the extent arising from or based upon:

(A) Any inaccuracy in any of the General Representations made by the Company that are expressly set forth in Article III (Company Representations and Warranties) of this Agreement or in any Ancillary Agreement;

(B) Any inaccuracy in any of the Fundamental Representations or the Specified Representations made by the Company that are expressly set forth in Section III (Company Representations and Warranties) of this Agreement;

(C) Any breach of any of the covenants and agreements made by the Company that are expressly set forth in this Agreement or in any Ancillary Agreement;

(D) Pre-Closing Taxes;

(E) Company Transaction Expenses in excess of the Reimbursement Cap; and

(F) Fraud committed by the Company or any of its Subsidiaries with respect to any of the representations and warranties made by the Company that are expressly set forth in Article III (Company Representations and Warranties) of this Agreement or in any Ancillary Agreement.

(ii) Individual Seller Matters. Each Seller Indemnifying Party shall indemnify and hold harmless, individually and solely on behalf of itself and no other Seller Indemnifying Party, the Purchaser Indemnified Parties from and against any Losses incurred or suffered by them to the extent arising from or based upon:

(A) Any inaccuracy in any of the General Representations made by such Seller Indemnifying Party that are expressly set forth in Article IV (Seller Representations and Warranties) of this Agreement or in any Ancillary Agreement;

(B) Any inaccuracy in any of the Fundamental Representations made by such Seller Indemnifying Party that are expressly set forth in Article IV (Sellers Representations and Warranties) of this Agreement;

(C) Any breach of any of the covenants and agreements made by such Seller Indemnifying Party that are expressly set forth in this Agreement or in any Ancillary Agreement; and

(D) Fraud committed by such Seller Indemnifying Party relating to this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

For the avoidance of doubt, with respect to claims under Section 8.2(a)(ii), (x) each Seller Indemnifying Party shall be solely responsible for the Losses of the Purchaser Indemnified Parties that arise from such Seller's breach or fraud for which an indemnity claim is made under Section 8.2(a)(ii), as applicable, and (y) no other Seller Indemnifying Party shall be responsible for any Losses of the Purchaser Indemnified Parties arising from any breach or fraud committed by such Seller Indemnifying Party for which an indemnity claim is made under Section 8.2(a)(ii).

(b) Maximum Seller Cap.

(i) A Seller Indemnifying Party's several liability and proportionate responsibility for Losses with respect to claims under Section 8.1(a) shall be determined based on such Seller Indemnifying Party's respective Pro Rata Share. In no event shall any Seller Indemnifying Party be responsible for more than his, her or its Pro Rata Share of Losses with respect to any claim made under Section 8.1(a)(i).

(ii) Except for claims made pursuant to Section 8.2(a)(i)(F) or Section 8.2(a)(ii)(D), in no event shall the aggregate liability of any Seller Indemnifying Party under this Agreement exceed such Seller Indemnifying Party's respective Pro Rata Share of the Purchase Price, which shall be an amount equal to (A) such Seller Indemnifying Party's respective Pro Rata Share, *multiplied by* (B) the Purchase Price (the "Maximum Seller Cap"). Claims made pursuant to Section 8.2(a)(i)(F) or Section 8.2(a)(ii)(D) shall not apply to or count towards the Maximum Seller Cap.

(iii) A Seller Indemnifying Party's aggregate liability for Losses with respect to claims pursuant to Section 8.2(a)(i)(F) or Section 8.2(a)(ii)(D) shall be unlimited, subject only to limitations under applicable Law.

8.3 Notice and Defense Procedures.

(a) Notification of Claims.

(i) Direct Claims and Third Part Claim Notice. With respect to any a direct claim or a third party claim (a "Third Party Claim") for which an Indemnified Party may be entitled to indemnification under Section 8.2(a) or Section 8.3(a), such Indemnified Party shall deliver written notice of such claim to the Indemnifying Party, no later than thirty (30) days after such Indemnified Party becomes aware that he, she or they may be entitled to indemnification for such claim under Section 8.2(a) or Section 8.3(a).

(ii) Details of Notice. Written notice of a direct claim or Third Party Claim for indemnification shall provide, in reasonable detail, the following:

- (A) The basis of such claim under this Agreement;
- (B) The facts and circumstances with respect to the matter underlying such claim, to the extent known; and
- (C) A good faith estimate of the Losses incurred or suffered by the Indemnified Party (or reasonably expected to be incurred or suffered by the Indemnified Party upon resolution of the claim or the matter underlying such claim), to the extent known.

(iii) Material Prejudice. No failure to notify or any delay in notifying an Indemnifying Party in accordance with this Section 8.3(a) shall relieve such Indemnifying Party of his, her or its obligations under this Article VIII, except to the extent that the Indemnifying Party is materially prejudiced by such failure or delay.

(b) Defense of Third Party Claims. With respect to any Third-Party Claim which, if adversely determined, would entitle the Indemnified Party to indemnification pursuant to this Article VIII:

(i) The Indemnifying Party shall be entitled, at its sole cost and expense, (A) to participate in the defense of such Third-Party Claim giving rise to the Indemnified Party's claim for indemnification or (B) at its option (subject to the limitations set forth below), to assume control of such defense and appoint lead counsel reasonably acceptable to the Indemnified Party. The Indemnifying Party shall have the right to assume control of such defense of a Third Party Claim for so long as:

- (A) The Indemnifying Party delivers written notice of its election to assume control of such defense to the Indemnified Party within (30) days after receiving written notice of such Third Party Claim from the Indemnified Party;
- (B) The Indemnifying Party is diligently and in good faith prosecuting the defense of such Third Party Claim
- (C) Such Third Party Claim seeks solely monetary damages, the amount of which will be indemnified by the Indemnifying Party, subject to this Agreement (including any limitations set forth in Article VIII);
- (D) Such Third Party Claim does not involve criminal or quasi-criminal allegations;
- (E) To the extent the Indemnifying Party is a party to the proceeding, the Indemnified Party has not determined in good faith that joint representation would be inappropriate because of a conflict of interest;
- (F) The Third Claim Party is not being directly asserted by or on behalf of any person who is a customer, vendor or supplier of the Company or its Subsidiaries; and

(G) The amount of Losses in respect of such Third Party Claim, assuming such Losses are ultimately awarded to the Indemnified Party, would not materially exceed the limitations on the Indemnifying Party's obligations set forth in this Article VIII.

Subject to Section 8.3(c), in the event that the Indemnifying Party assumes the defense of any Third Party Claim, it shall have the right to take such action as it deems reasonably necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, provided, that if in the reasonable opinion of counsel to the Indemnified Party, (x) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party, or (y) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required.

(ii) If any of conditions set forth in clauses (A) through (F) above in Section 8.3(b)(i) are not satisfied or the Indemnifying Party otherwise elects not to assume control of the defense of such Third Party Claim, then the Indemnified Party may undertake the defense and resolution of such Third Party Claim with counsel reasonably satisfactory to the Indemnifying Party. The Indemnifying Party shall be responsible for reimbursing the Indemnified Party for the costs of defending and resolving such Third Party Claim (including reasonable attorneys' fees and expenses) as Losses and for indemnifying for any other Losses arising from or related to such Third Party Claim, in each case, pursuant to (and subject to) this Article VIII.

(iii) The Indemnified Party, the Indemnifying Party and their respective Representatives shall cooperate with one another in good faith in the course of prosecuting and defending Third Party Claims, including complying with any reasonable requests of the other party and providing reasonable access to information, documents and management personnel to the extent reasonably related to the Third Party Claim. Notwithstanding the foregoing, a party need not comply with a request and may restrict access to certain information, documents and management personnel referred to in the immediately preceding sentence, in each case, to the extent reasonably necessary to (A) comply with restrictions or requirements under applicable Law, (B) comply with obligations or restrictions of confidentiality and information sharing and (C) preserve any attorney-client, work product or other similar applicable privilege or doctrine.

(c) Settlement of Claims.

(i) An Indemnifying Party who has duly assumed control of the defense of a Third Party Claim shall first obtain the written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned, delayed or denied) prior to such Indemnifying Party settling, compromising or consenting to the entry of a judgment or award with respect to such Third Party Claim. However, the Indemnifying Party may settle, compromise or consent to the entry of judgment award of any such Third Party Claim without such prior written consent of the Indemnified Party only if: (A) the Indemnified Party and its Affiliates and Representatives shall have no liability for any damages or other monetary obligations for such Third Party Claim, (B) such settlement, compromise, judgment or award does not contain any sanction, obligation or restriction that would materially and adversely affect the conduct of any business of the Indemnified Party or its Affiliates or Representatives and (C) such settlement, compromise, judgment or award fully, unconditionally and irrevocably releases the Indemnified Party and its Affiliates and Representatives with respect to such Third Party Claim.

(ii) If an Indemnifying Party has not or is not otherwise entitled to assume control of the defense of a Third Party Claim, then the Indemnifying Party shall have no authority, and shall not otherwise be entitled, to settle, compromise or consent to the entry of a judgment or award with respect to any Third Party Claim without the prior written consent of the Indemnified Party (which may be withheld in its sole discretion).

(iii) An Indemnified Party shall not settle, compromise or consent to the entry of judgment or award of any Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned, delayed or denied). If the Indemnified Party seeks the Indemnifying Party consent to a settlement, comprise, or consent to the entry of a judgment or award, then the Indemnifying Party shall have thirty (30) days to

8.4 Limitations and Qualifications.

(a) Insurance Offset. All Losses subject to indemnification under this Article VIII shall be reduced dollar for dollar by the amount of insurance proceeds that are actually realized and recovered by the Indemnified Party (net of any deductible or co-payment and all out of pocket costs related to such recovery) under insurance policies with third parties for matters giving rise to such Losses. If the Indemnified Party receives any such insurance proceeds with respect to such Losses after the Indemnifying Party has already provided indemnification payments to such Indemnified Party under this Article VIII for such Losses, then the Indemnified Party shall promptly remit such insurance proceeds to the Indemnifying Party, provided that in no event shall the Indemnified Party have any obligation hereunder to remit to the Indemnifying Party any portion of such insurance proceeds in excess of the indemnification payment or payments actually received from the Indemnified Party with respect to such Losses.

(b) Effects of Investigation. The representations, warranties, covenants and agreements of the parties (including the Indemnified Party's right to indemnification with respect thereto) shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or that any covenant or agreement was not performed or complied with.

(c) Mitigation. The parties shall use commercially reasonable efforts to mitigate any Losses in connection with any claims under this Agreement.

(d) Excluded Losses. No Indemnified Party shall be entitled to indemnification for any Losses based upon or constituting (i) special, punitive or exemplary damages or (ii) consequential damages, (iii) damages from lost profits, diminution in value or similar bases or (iv) damages calculated by reference to any multiple of earnings or EBITDA (or any other valuation methodology), damage to reputation or loss to goodwill, in each case of clauses (i) through (iv), whether based on contract, tort, strict liability, other law or otherwise and whether or not arising from the other party's or any of its Affiliates' nor any of their respective representatives' sole, joint or concurrent negligence, strict liability or other fault ("Excluded Losses"); provided that the foregoing shall be treated as Losses and shall not be deemed to be "Excluded Losses", and the Indemnified Party shall be entitled to be indemnified for the same, to the extent (x) awarded to a Governmental Authority or other third party in connection with a Third Party Claim and (y) based upon or constituting consequential damages or damages from lost profits, diminution in value or similar bases, in each case of this clause (y), that are the natural, probable or reasonably foreseeable result of the matter giving rise to indemnification under this Article VIII.

8.5 Tax Treatment of Indemnity Payments. Sellers and the Purchaser agree to treat any indemnity payments made pursuant to this Article VIII as an adjustment to the Purchase Price for all Tax purposes and shall be treated as such by the Purchasers and Sellers on their Tax Returns to the greatest extent permitted by applicable Laws.

8.6 Payments.

(a) Once a claim for indemnification and its corresponding Losses are agreed to by the Indemnifying Party or are otherwise settled, compromised or adjudicated to be payable pursuant to this Article VIII (such agreement, settlement, compromise or adjudication, the "Final Resolution"), the Indemnifying Party shall satisfy its obligations within ten (10) Business Days of such Final Resolution by wire transfer of immediately available funds. If an Indemnifying Party does not make full payment of any such obligations within such ten (10) Business Day period, then any amount payable shall accrue interest daily at a rate per annum equal to 2.00%, compounding annually, during the period beginning on the date of the Final Resolution of such Loss and ending on (and including) the date such payment has been made ("Accrued Loss Interest"). Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed. The Indemnifying Party shall pay such interest, together with the amount of such Loss.

(b) Any Losses payable to an Indemnified Party pursuant to this Article VIII shall be satisfied directly by the Indemnifying Party, together with any Accrued Loss Interest (if any).

8.7 Exclusive Remedies(a) . From and after the Closing, except as expressly provided in Section 10.8 (Equitable Remedies), the rights to indemnification that are expressly set forth in this Article VIII shall constitute the sole and exclusive remedies available to any party hereto with respect to any remedies, claims or actions relating to the terms and conditions of this Agreement or any Ancillary Agreement, the transactions contemplated hereby or thereby or the subject matter hereof (whether in law or in equity or whether based on contract, tort, strict liability, other Laws or otherwise). Except as expressly set forth in the foregoing sentence, no party shall have any remedies, claims or actions relating to the terms and conditions of this Agreement or any Ancillary Agreement, the transactions contemplated hereby or thereby or the subject matter hereof or thereof (whether in law or in equity or whether based on contract, tort, strict liability, other Laws or otherwise), and each party hereby waives and disclaims all such remedies, claims and actions. For the avoidance of doubt, this Article VIII shall not apply with respect to any Tax Matters, which shall be governed solely by Article VII.

ARTICLE IX

DEFINITIONS

9.1 Definitions. In addition to any other definitions contained in this Agreement, the following words, terms and phrases shall have the respective meanings specified as follows when used in this Agreement:

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

“Ancillary Agreements” means the Employment Agreements and each of the written agreements, documents, statements, certificates and instruments to be delivered pursuant to Sections 2.2 or 2.3.

“Anti-Corruption Laws” means any Laws relating to anti-bribery or anticorruption (governmental or commercial), including Laws that prohibit the corrupt payment, offer, promise, or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any representative of a foreign Governmental Authority or commercial entity to obtain a business advantage, including the FCPA, the U.K. Bribery Act of 2010, Prevention of Corruption Act, 1988 and all national and international Laws enacted to implement the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions.

“Biorepository Business” means the Company’s biorepository storage and sample management business.

“Business Day” means any day other than a Saturday, a Sunday or a day on which national banking institutions in New York, New York are required or authorized to be closed.

“CARES Act” shall mean the Coronavirus Aid, Relief and Economic Security Act, as signed into law by the President of the United States on March 27, 2020, Notice 2020-65, the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, issued August 8, 2020, or any similar applicable federal, state or local Law.

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

“Company Data” means all data collected, generated, or received in connection with the services rendered by the Company and the marketing, delivery, or use of any Company Offering, including Confidential Data, Personal Information, Tracking Data and all credentials collected, held, or otherwise managed by or on behalf of the Company.

“Company Disclosure Schedule” means the disclosure schedule delivered by the Company and the Sellers to the Purchaser on the date hereof concurrently with entry into this Agreement.

“Company Intellectual Property” means any and all Intellectual Property that is owned, purported to be owned, used, held for use or practiced by the Company.

“Company Material Adverse Effect” means any event, circumstance, change, development, state of facts or effect that individually or in the aggregate when considered with other events, circumstances, changes, developments, states of fact or effects, is or would reasonably be expected to be materially adverse to the current business, condition (financial or otherwise), assets or results of operations of the Company or on the ability of the Company to timely consummate the Transaction; provided, that no event, change, occurrence, circumstance or effect (by itself or taken together with any and all other events, changes, occurrences, circumstances or effects) that results from or arises out of or is related to any of the following shall constitute or be deemed to contribute to a “Company Material Adverse Effect”, or be taken into account in determining whether a “Company Material Adverse Effect” has occurred or may, would or could occur: (a) changes in general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally; (b) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world; (c) changes in political conditions in the United States or any other country or region in the world, acts of war, armed hostilities, sabotage, or terrorism (including any commencement, continuation, or escalation of any such acts of war, armed hostilities, sabotage or terrorism), earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wildfires or other natural disasters, weather conditions and other force majeure events, in each case, in the United States or any other country or region in the world; (d) changes in Law or other legal or regulatory conditions (or the interpretation thereof); or (e) changes in applicable accounting standards (or the interpretation thereof); provided that, the matters described in the preceding clauses (a) through (e) shall be taken into account in the determination of whether or not a Company Material Adverse Effect has occurred to the extent any such matter has a disproportionate adverse effect on the financial condition, business, or results of operations of the Company relative to other participants in the industries or markets in which they operate.

“Company Offerings” means the products and services (including websites) developed, offered, designed, developed, marketed, licensed, sold, performed, produced, serviced, distributed, or otherwise made available by or on behalf of the Company, including any product or service that is currently under development by the Company.

“Company Organizational Documents” means the Organizational Documents of the Company.

“Company Technology” means all Technology owned, purported to be owned, used, held for use or practiced by the Company.

“Company Transaction Expenses” means fees, costs and expenses incurred by or on behalf of the Company at or prior to the Closing in connection with preparation, negotiation and execution of this Agreement or any Ancillary Agreement or the transactions contemplated by hereby or thereby, in each case, to the extent unpaid at the Closing, including but not limited to: (a) the fees, costs and expenses of investment bankers, brokers, finders, financial advisors, tax advisors, consultants, legal counsel and other similar representatives and advisors engaged by or on behalf of the Company; and (b) any change in control, retention, transaction or severance payments that become payable to any director, manager, officer, employee or individual consultant of the Company as a result of the transactions contemplated by this Agreement or any Ancillary Agreement (but excluding any such payments pursuant to “double trigger” arrangements or other similar arrangements, in each case, resulting in payments or benefits provided upon a termination of service upon or following the consummation of the Closing).

“Confidential Data” means information, including Personal Information, in whatever form that the Company is obligated, by Law or Contract, to protect from unauthorized access, use, disclosure, modification or destruction together with any data owned or licensed by the Company that is not intentionally shared with the general public or that is classified or designated by the Company as confidential.

“Contract” means any agreement, contract, understanding, instrument, commitment, lease, guaranty, indenture, license, sales order (including purchase orders) or other arrangement (including any amendments, modifications and supplements thereto), in each case, that is legally binding, whether oral or written.

“COVID-19” means SARS-CoV2 (severe acute respiratory syndrome coronavirus 2), coronavirus disease 2019 or COVID-19, including any future resurgence or evolutions or mutations thereof.

“Deferred Payroll Taxes” means (a) any Taxes payable by the Company that (i) relates to the portion of the “payroll tax deferral period” (as defined in Section 2302(d) of the CARES Act) that occurs prior to the Closing and (ii) that is payable following the Closing as permitted by Section 2302(a) of the CARES Act, similar law or executive order (together with all regulations and guidance related thereto issued by a Governmental Authority); and (b) any Taxes payable by any Personnel that are deferred under the CARES Act are payable following the Closing (without regard for any forgiveness thereof implemented under the CARES Act).

“EDGAR” means the Electronic Data Gathering, Analysis, and Retrieval database of the SEC.

“Environmental Laws” means any Laws regulating or relating to the protection of human health and safety, pollution (or the cleanup thereof), natural resources or the environment, including the protection thereof (including endangered or threatened species, ambient air, soil, surface water or groundwater, or subsurface strata), including Laws relating to contamination and the use, generation, management, monitoring, investigation, clean up, removal handling, transport, treatment, disposal, storage or any other action related to the Release or threatened Release of Hazardous Substances.

“Equity Interests” means with respect to any Person, any of its capital stock, partnership interests (general or limited), limited liability company interests, trust interests or other securities or other interests which entitle the holder thereof to receive dividends or distributions on liquidation, winding up or dissolution of such Person, or to vote for the election of directors or other management of such Person, or to exercise other rights generally afforded to stockholders of a corporation (including the ability to exert control over such Person).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person (whether or not incorporated) other than the Company that, together with the Company, is treated as a single employer under Section 414 of the Code.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Exchange Ratio” means a number equal to (a) the Purchaser Consideration Share Pool, divided by (b) the total number of Company Shares held or deemed held by all Sellers.

“Export Control” means (a) all applicable trade, export control, import, and antiboycott Laws and regulations imposed, administered, or enforced by the U.S. government, including the Arms Export Control Act (22 U.S.C. § 2778), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706), Section 999 of the Internal Revenue Code, Title 19 of the U.S. Code, the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130), the Export Administration Regulations (15 C.F.R. Parts 730-774), the Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4852), the U.S. customs regulations at 19 C.F.R. Chapter 1, and the Foreign Trade Regulations (15 C.F.R. Part 30); and (b) all applicable trade, export control, import, and antiboycott Laws and regulations imposed, administered or enforced by any other country, including but not limited to the Foreign Exchange and Foreign Trade Act of Japan and its subordinate rules and regulations, except to the extent inconsistent with United States Law.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended.

“Fundamental Representations” means (a) the representations and warranties made by the Company that are expressly set forth in Sections 3.1 (Organization), 3.2 (Authorization), 3.4 (Capitalization), 3.5 (Subsidiaries; Investments), and 3.24 (Brokers) and (b) the representations and warranties made by each Seller that are expressly set forth in Sections 4.1 (Organization), 4.2 (Authority), and 4.5 (Title to Company Equity Interests).

“GAAP” means United States generally accepted accounting principles in effect, as they may be amended from time to time.

“General Representations” means (a) the representations and warranties made by the Company that are expressly set forth in Article III (Company Representations and Warranties) or in any Ancillary Agreement, and (b) the representations and warranties made by each Seller that are expressly set forth in Article IV (Seller Representations and Warranties) or in any Ancillary Agreement in each case of clauses (a) and (b), other than the Fundamental Representations and the Specified Representations.

“Government Contract” means any prime contract, subcontract, basic ordering agreement, letter contract, order (whether purchase, delivery, change or task), teaming agreement, arrangement or other commitment of any kind between the Company, on the one hand, and any Governmental Authority or prime contractor or subcontractor to a Governmental Authority, on the other hand, or that grants any Governmental Authority any material rights or that requires consent, approval or waiver of, or notice to, any Governmental Authority in connection with the Transaction.

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, any department, board, commission, court, tribunal or arbitrator, and any self-regulatory organization.

“Hazardous Substances” means any substance that: (a) is or contains asbestos, urea formaldehyde insulation, polychlorinated biphenyls, petroleum or petroleum products or any fraction thereof, radon gas, microbiological contamination or related materials, (b) requires investigation or remedial action pursuant to any Environmental Law, or is defined, listed or identified as a “hazardous waste,” “hazardous substance,” “toxic substance” or words of similar import thereunder, (c) is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and is regulated as such by any Governmental Authority or (d) is regulated under any Environmental Law.

“Indebtedness” of any Person means, without duplication, (a) the outstanding principal amount, accrued and unpaid interest, premiums, related expenses, penalties (including prepayment penalties), charges, and commitment and other fees of (i) indebtedness of such Person for borrowed money, (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, in each case, whether due and payable on the Closing Date or otherwise; (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding accounts payable, other current liabilities and credit card debt not more than ninety (90) days past the invoice date arising in the ordinary course of business); (c) all obligations of such Person with respect to hedging agreements or derivative instruments, including with respect to any open trade or credit exposure thereunder and the cost of any breakage fees, if any, to be paid in connection with the Closing; (d) all obligations under leases to which such Person is a party and which have been or are required to be recorded as capitalized leases under GAAP; (e) all obligations of such Person arising from cash or book overdrafts; (f) accrued and unpaid profit sharing expenses, employee bonuses or overrides and, shareholder bonuses and shareholder commissions, together with the employer-paid portion of any employment and payroll Taxes related thereto; (g) all obligations of the type referred to in clauses (a) through (f) of other Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor or surety; (h) all obligations of the type referred to in clauses (a) through (g) of other Persons secured by any Lien on any property or asset of such Person; (i) all interest, premiums, penalties, charges, fees, expenses and other amounts due in connection with the payment and satisfaction in full of the obligations described in the foregoing clauses (a) through (h); (j) any obligations deferred as a result of COVID-19 (including any Deferred Payroll Taxes); and (k) any accrued and unpaid severance obligations to former employees of the Company, together with the employer-paid portion of any employment and payroll Taxes related thereto.

“Indemnifiable Taxes” means (a) any and all Taxes of the Company or relating to the business or operations of the Company, in each case, attributable or relating to any Pre-Closing Tax Period, and (b) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) or any of its Subsidiaries (or any predecessor of such Subsidiaries) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law.

“Indemnified Parties” means the Purchaser Indemnified Parties.

“Indemnifying Parties” means the Seller Indemnifying Parties.

“Intellectual Property” means all intellectual property, intellectual property rights and related priority rights protected, created or arising under the Laws of the United States or any other jurisdiction or under any international convention, including all (a) patents and patent applications, including any continuation, continuation-in-part, divisional and provisional applications and any patents issuing thereon and any reissues, reexaminations, substitutes and extensions of any of the foregoing (“Patents”), (b) trademarks, service marks, trade names, trade dress, logos, corporate names and other source or business identifiers and any registrations, applications, renewals and extensions of any of the foregoing and all goodwill associated with any of the foregoing (“Marks”), (c) Internet domain names uniform resource locators and social media accounts and handles, (d) copyrights, mask works, works of authorship and moral rights and any registrations, applications, renewals, extensions and reversions of any of the foregoing, (e) trade secrets, know-how and confidential and proprietary information, information, designs, formulae, compositions, algorithms, procedures, methods, techniques, ideas, research and development, data, specifications, processes, inventions (whether patentable or not and whether reduced to practice or not) and improvements, in each case, excluding any of the foregoing that comprise or are protected by issued Patents or published Patent applications (“Trade Secrets”), (f) rights in and to Technology and (g) Software.

“Intellectual Property License” means any license, sublicense, right, covenant, non-assertion, permission, consent, release or waiver under or with respect to any Intellectual Property or Technology.

“Investment” means any investment in any Person, whether by means of acquiring (whether for cash, property, services, Equity Interests or otherwise), making or holding debt securities, Equity Interests, capital contributions, loans, time deposits, advances, guarantees or otherwise (in each case, other than accounts arising in the ordinary course of business from the sale of inventory or the performance of services). The amount of any Investment shall be the fair market value of such Investment at the time such Investment is made *plus* the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect thereto.

“IRS” means the United States Internal Revenue Service.

“Key Continuing Employees” means Praveen Nair, Anna Travesa, Kali West, Amy Yamamura, Matthew Nord, Francisco Pina-Nunez, Mai Johnson, and Sreeraj Pillai.

“Key Employees” means Praveen Nair and Anna Travesa.

“Knowledge” means (a) with respect to the Company, the actual knowledge of the Key Employees after reasonable inquiry, (b) with respect to the Sellers, the actual knowledge of any of the Sellers after reasonable inquiry, and (c) with respect to Purchaser, the actual knowledge of any manager, director or officer of the Purchaser after reasonable inquiry.

“Law” means any federal, state, foreign or local law (including common law), statute, ordinance, rule, order, regulation, code, constitution, writ, injunction, directive, judgment, treaty, decree or administrative or judicial decision of any Governmental Authority.

“Legal Proceeding” means any charge, investigation, claim, complaint, arbitration, action, suit or proceeding of any nature, civil, criminal, administrative, regulatory or otherwise, in Law or in equity, by or before any arbitrator, court or other Governmental Authority.

“Lien” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment, proxy, voting trust or agreement, transfer or voting restriction, or other encumbrance of any nature whatsoever.

“Losses” means losses, damages, liabilities, deficiencies, causes of action, claims, actions, judgments, interest (including Accrued Loss Interest), awards, penalties, fines, fees, costs or expenses of whatever kind, including reasonable attorneys’ fees, the cost of enforcing, defending or resolving any claims or right to indemnification hereunder, and the cost of pursuing any insurance providers. “Losses” shall exclude “Excluded Losses” except as otherwise provided in Section 8.4(d).

“Open Source Software” means any software that contains or is derived in any manner (in whole or in part) from any software, code or libraries that are distributed as free software or as open source software or under any licensing or distribution models similar to open source, including but not limited to any software licensed under or subject to terms that require source code to be provided or made available to subsequent licensees or sublicensees (regardless of whether the license restricts source code from being distributed in modified form) or which may impose any other obligation or restriction with respect to a Person’s Intellectual Property, including, without limitation, any license that is defined as an Open Source License by the Open Source Initiative, and any similar license or distribution model.

“Order” means any order, injunction, judgment, decree, determination, ruling, writ, decision, assessment or arbitration or other award or requirement of, or adopted, promulgated, or applied by, an arbitrator or other Governmental Authority.

“Organizational Documents” means as to any Person, the constitutional, governance or organizational documents of such Person, including any charter, certificate or articles of incorporation, certificate of formation, articles of association, bylaws, trust instrument, partnership agreement, limited liability company agreement or other similar document (and with respect to the Company, for the avoidance of doubt, including each of the Company Organizational Documents).

“Owned Intellectual Property” means Company Intellectual Property that is owned or purported to be owned by the Company.

“Owned Technology” means Company Technology that is owned or purported to be owned by the Company.

“Permits” means any approvals, authorizations, consents, licenses, orders, variances, exemptions, franchises, permits or certificates of (or issued by) a Governmental Authority.

“Permitted Liens” means (a) Liens for Taxes, assessments or other governmental charges not yet due, payable or delinquent (or which may be paid without interest or penalties) or the amount or validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been accrued in accordance with GAAP; (b) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the ordinary course of business or the amount or validity of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been accrued in accordance with GAAP; and (c) zoning, building and other similar restrictions which do not, individually or in the aggregate, impair the continued use, occupancy, value or marketability of title of the property to which they relate.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust or other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

“Personal Information” means any data or information relating to an identified or identifiable natural person; an “identifiable person” is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity, including Tracking Data, unique device or browser identifiers, names, ages, addresses, telephone numbers, email addresses, social security numbers, passport numbers, alien registration numbers, medical history, employment history, and/or account information; and shall also mean “personal data,” “personal information” “personal health information,” and “personal financial information” each as defined by applicable Laws relating to the collection, use, sharing, storage, and/or disclosure of information about an identifiable individual. Personal Information includes pseudonymized data.

“Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date; and that portion of any Straddle Period ending on (and including) the Closing Date.

“Pre-Closing Taxes” means, collectively, (a) any Taxes of the Company with respect to any Pre-Closing Tax Period; (b) Taxes of or with respect to any Seller (including any capital gains Taxes or other Taxes arising as a result of the Transaction) or any of their Affiliates for any Tax period; (c) Taxes imposed on, allocated or attributable to or incurred or payable by third parties with respect to which the Company has an obligation to indemnify such third party pursuant to a transaction consummated on or prior to the Closing; (d) Taxes for which the Company is liable under Treasury Regulations Section 1.1502-6 (or any analogous or similar provision of state, local or foreign Law) or as a transferee or successor, by Contract or otherwise, in each case with respect to any Pre-Closing Tax Period; and (e) any Transfer Taxes allocable to the Sellers pursuant to Section 7.4.

“Privacy Commitments” means any and all (i) Privacy Laws; (ii) Privacy Policies; (iii) contracts with third-parties governing privacy and data issues into which the Company has entered or by which it is otherwise bound; (iv) third-party privacy policies, terms of use, and similar documents that the Company is or has been contractually obligated to comply with; (v) rules of any applicable self-regulatory organizations in which the Company is or has been a member or that the Company has been contractually obligated to comply with; and (vi) any applicable published industry best practice or other standard in which the Company operates (including, if applicable, the PCI Data Security Standard and the Digital Advertising Alliance’s Self-Regulatory Principles for Online Behavioral Advertising and Multi-Site Data Collection) that pertains to privacy or restrictions or obligations related to the collection, use, disclosure, transfer, transmission, storage, hosting, disposal, retention, interception or other Processing of Personal Information or direct marketing to consumers or consumer protection.

“Privacy Laws” means each Law pertaining to the privacy, data protection or data transfer, including all privacy and security breach disclosure Laws, implementing Laws, ordinances, permit, regulation, rule, code, order, constitution, treaty, common law, judgment, ruling, decree, other requirement or rule of law, in each case, of any Governmental Authority, including, as applicable, the General Data Protection Regulation 2016/679 (GDPR), the e-Privacy Directive 2002/58/EC, UK General Data Protection Regulation and the UK Data Protection Act 2018, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the Children’s Online Privacy Protection Act (COPPA) of 1998, as amended, the Telephone Consumer Protection Act of 1991, as amended, the Do-Not-Call Implementation Act of 2003, as amended, Section 5 of the Federal Trade Commission Act of 1914, as amended (as the same has been interpreted to apply to privacy, data protection, breach disclosure or data transfer issues), Title 1.81.5 - California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100-1798.199 (CCPA) and all similar applicable foreign federal and state information privacy and security Laws.

“Privacy Policy” means a written policy of the Company made available in connection with the collection of information provided by or on behalf of individuals that is labeled as a “Privacy Policy,” or is reached on the Company website by a link that includes the label “Privacy” or that is a written policy, notice or disclosure that describes how information provided by or on behalf of individuals will be held, used, Processed or disclosed by the Company.

“Process” or “Processing” means, with respect to Personal Information, the use, collection, processing, storage, recording, organization, adaption, alteration, transfer, retrieval, consultation, disclosure, dissemination or combination of such Personal Information.

“Property Taxes” means all real property Taxes, personal property Taxes and similar ad valorem Taxes.

“Pro Rata Share” means, with respect to a Seller, a fraction expressed as a percentage, (a) the numerator of which is the Consideration Shares issued to such Seller Indemnifying Party, and (b) the denominator of which is the Purchaser Consideration Share Pool.

“Purchase Price” means \$8,750,000.00.

“Purchaser Common Shares” means a number of shares of Class A Common Stock, par value \$0.001 per share, of the Purchaser.

“Purchaser Consideration Share Pool” means a number of Purchaser Common Shares equal to (i) the Purchase Price, *divided by* (ii) the Purchaser VWAP.

“Purchaser Disclosure Schedule” means the disclosure schedule delivered by the Purchaser to the Company on the date hereof concurrently with entry into this Agreement.

“Purchaser Indemnified Parties” means the Purchaser, its Affiliates (which, for the avoidance of doubt, shall include the Company and its Subsidiaries from and after the Closing) and the Purchaser's and its Affiliates' shareholders, partners, members, directors, managers, officers, employees, agents and other Representatives. Notwithstanding the foregoing, “Purchaser Indemnified Parties” shall exclude the Sellers.

“Purchaser VWAP” means, with respect to Purchaser Common Shares, the daily volume weighted average price of such shares on the NASDAQ trading market for the 30-day trading day period ending on (and including) the trading day immediately prior to the Closing Date, as reported by Bloomberg Financial L.P. using the AQR function.

“Reimbursement Cap” means \$25,000.

“Registered Company Intellectual Property” means all Owned Intellectual Property that has been issued by, registered with, or the subject of an application filed with, as applicable, the United States Patent and Trademark Office, the United States Copyright Office, private domain name registrar, or any similar office or agency anywhere in the world.

“Release” means any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like (including the threat of any of the foregoing), including, the moving of any materials through, into or upon, any land, soil, surface water, groundwater or air, or otherwise entering into the indoor or outdoor environment.

“Remaining Employees” means the Company's employees except for the Key Continuing Employees.

“Representatives” means, with respect to any Person, any and all directors, managing members, managers, partners, officers, employees, consultants, financial advisors, counsel, consultants, accountants, agents and other representatives of such Person.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002 (including the rules and regulations promulgated thereunder).

“Sanctioned Person” means a Person that is the subject of Sanctions, including (i) listed in any list of designated Persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control (“OFAC”) or other U.S. or non-U.S. Governmental Entity under Sanctions; (ii) operating from or organized under the Laws of a country or territory that is the subject of country- or territory-wide Sanctions (Cuba, Iran, North Korea, Syria, or the Crimea region); or (iii) majority-owned or controlled by, or acting for or on behalf of, any of the foregoing.

“Sanctions” means any applicable economic, trade or financial sanctions Laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (a) the United States government, (b) the United Nations, (c) the European Union or its Member States, (d) the United Kingdom, (e) Japan or (f) the respective governmental institutions and agencies of any of the foregoing, including without limitation, OFAC, the United States Department of State and her Majesty’s Treasury of the United Kingdom.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Seller Indemnifying Party” shall have the meaning set forth in Section 8.2.

“Software” means all (a) computer programs and other software, including any and all software implementations of algorithms, models and methodologies, whether in Source Code, object code or other form, including libraries, subroutines and other components thereof; (b) computerized databases and other computerized compilations, and collections of data or information, including all data and information included in such databases, compilations or collections; (c) descriptions, flowcharts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; (d) screens, user interfaces, command structures, report formats, firmware, development tools, templates, menus, buttons and icons; and (e) documentation including development, diagnostic, support, user manuals and other training documentation related to any of the foregoing.

“Source Code” means computer software in a form which a program’s design, logic, structuring and processing methods may be read by a trained human being, including without limitation, all source code, scripts, data definition, flow charts, file layouts, program narratives and program listings.

“Specified Representations” means the representations and warranties made by the Company that are expressly set forth in Section 3.19 (Taxes).

“Straddle Period” means any Tax period beginning before or on and ending after the Closing Date.

“Subsidiary” means, with respect to any Person, any other Person (a) of which fifty percent (50%) or more of the outstanding Equity Interests or securities carrying a majority of the voting power in the election of the board of directors or other governing body of such Person is owned, directly or indirectly, by such first Person, or (b) of which such first Person controls, directly or indirectly, the management of such Person.

“Tax” means any federal, state, local or foreign income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, unclaimed property, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, escheat or unclaimed property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax, duty, levy, impost, assessment or other amount in the nature of a tax of any kind whatsoever, including any interest, fines, penalty or addition thereto, whether disputed or not.

“Tax Authority” means any Governmental Authority having or purporting to exercise jurisdiction with respect to any Tax.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement of any kind relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, filed or required to be filed with any Tax Authority.

“Technology” means all, Software, content, websites, technical data, subroutines, tools, materials, inventions, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, documentation, user manuals and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein.

“Third-Party Claim” shall have the meaning set forth in Section 8.3(a).

“Tracking Data” means (a) any information or data collected in relation to online, mobile or other electronic activities or communications that can reasonably be associated with a particular Person, user, computer, mobile or other device, or instance of any application or mobile application, (b) any information or data collected in relation to off-line activities or communications that can reasonably be associated with or that derives from a particular Person, user, computer, mobile or other device or instance of any application or mobile application, or (c) any device identification, device activity data or data collected from a networked physical object.

“Transaction Documents” means this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement to which the Purchaser, the Company, or the Sellers is a party or to be executed by the Purchaser, the Company, or the Sellers in connection with the consummation of the Transaction.

“Treasury Regulation” means the final and temporary regulations prescribed under the Code.

9.2 Additional Defined Terms. In addition to the terms defined in Section 9.1, additional defined terms used herein shall have the respective meanings set forth in the Sections indicated in the below table:

<u>Defined Term</u>	<u>Section</u>
Agreement	Preamble
Balance Sheet	Section 3.6(a)
Balance Sheet Date	Section 3.6(a)
Benefit Plans	Section 3.18(a)
Closing	Section 2.1
Closing Date	Section 2.1
Company	Preamble

<u>Defined Term</u>	<u>Section</u>
Company 401(k) Plan	Section 6.3
Company Certifications	Section 6.2
Company Certifications Transfer	Section 6.2
Company Shares	Recitals
Company Software	Section 3.12(h)
Company Trade Secrets	Section 3.12(g)
Employee IP Agreement	Section 3.12(d)
Employment Agreements	Section 2.2(f)
Environmental Permits	Section 3.16(a)(iii)
Environmental Reports	Section 3.16(b)
Excluded Losses	Section 8.4(d)
Financial Statements	Section 3.6(a)
Fundamental Representations	Section 8.1(a)(ii)
Indemnifying Party	Section 8.2(a)(i)
Insurance Policies	Section 3.21
Intended Tax Treatment	Section 7.6
Interim Balance Sheet	Section 3.6(a)
Interim Balance Sheet Date	Section 3.6(a)
Interim Financial Statements	Section 3.6(a)
IRCA	Section 3.17(d)
IT Systems	Section 3.12(m)
Key Continuing Employee Employment Agreements	Recitals
Malicious Code	Section 3.12(i)
Marks	Section 9.1
Material Contracts	Section 3.9(a)
Material Customers	Section 3.20(b)(i)
Material Suppliers	Section 3.20(b)
Party or Parties	Preamble
Patents	Section 9.1
Personnel	Section 3.8(j)
Pre-Closing Taxes	Section 7.1
Privacy Commitments	Section 3.13(a)
Purchaser	Preamble
Purchaser 401(k) Plan	Section 6.3
Purchaser SEC Documents	Section 5.5
Real Property	Section 3.11(b)
Real Property Lease	Section 3.11(b)
Remaining Employee Employment Agreements	Section 2.2(f)
Seller or Sellers	Preamble
Seller Released Claims	Section 6.4
Seller Released Party	Section 6.4
Seller Releasing Party	Section 6.4
Sellers Majority	Section 6.5
Share Purchase	Recitals
Shares	Recitals

<u>Defined Term</u>	
Tangible Company Properties	
Trade Secrets	
Transaction	
Transfer Taxes	

<u>Section</u>
Section 3.10(b)
Section 9.1
Recitals
Section 7.4

9.3 Certain Interpretive Matters. Unless otherwise expressly provided for, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) Time is of the Essence; Calculation of Time Periods. Time is of the essence for each and every provision of this Agreement. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to "\$" or dollars shall mean United States dollars.

(c) Exhibits and Schedules; Construction. The Exhibits and Schedules to this Agreement, the Company Disclosure Schedule and the Purchaser Disclosure Schedule are an integral part of this Agreement and are hereby incorporated herein and made a part hereof as if set forth herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall be defined as set forth in this Agreement. Any disclosure set forth in one Schedule of the Company Disclosure Schedule or the Purchaser Disclosure Schedule, as applicable, shall apply to (i) the representations and warranties contained in the Section of this Agreement to which it corresponds in number, (ii) any representation and warranty to which it is referred by cross reference, and (iii) any other representation or warranty to the extent it is readily apparent from the wording of such disclosure that such disclosure is applicable to such representation or warranty.

(d) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(e) Headings. The provision of the Table of Contents, the division of this Agreement into Articles, Sections, Exhibits, Schedules, clauses and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Article," "Section," "Exhibit," "Schedule," "clause" or other subdivision are to the corresponding Article, Section, Exhibit, Schedule, clause or other subdivision of this Agreement unless otherwise specified.

(f) Herein. The words such as "herein," "hereinafter," "hereof," "hereunder" and "hereto" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(g) Including. The word “including” or any variation thereof means “including, without limitation” and “including, but not limited to” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) Or. The word “or” when used in a list shall not indicate that the listed items are exclusive of each other.

(i) Made Available. An item shall be considered “made available” (or other similar phrase) to Purchaser only if such item has been made available for viewing by the Purchaser in the electronic data room established by the Company in connection with the Transaction at least five (5) calendar days prior to the Closing Date.

(j) Reflected On; Set Forth On; Set Forth In. An item arising with respect to a specific representation or warranty shall be deemed to be “reflected on” or “set forth on” or “set forth in” a balance sheet or financial statements, to the extent any such phrase appears in such representation or warranty, if (i) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statements that related to the subject matter of such representation, (ii) such item is otherwise specifically set forth on the balance sheet or financial statements, or (iii) such item is reflected on the balance sheet or financial statements and is specifically set forth in the notes thereto.

(k) References to Statute or Statutory Provision. A reference to any statute or statutory provision is a reference to that statute or statutory provision as re-enacted, re-numbered, amended or extended before the date hereof and includes reference to any subordinate legislation (as re-enacted, amended or extended) made under it before the date hereof.

(l) Joint Negotiation and Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE X

MISCELLANEOUS

10.1 Expenses. Each Party shall bear its own costs and expenses, including, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the negotiation and execution of this Agreement and the other Transaction Documents and each other agreement, document and instrument contemplated hereby or thereby and the consummation of the Transaction, except that at the Closing, the Purchaser shall pay the reasonable fees and expenses of the Company, in an amount not to exceed, in the aggregate, \$25,000.

10.2 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized courier (receipt requested), or (c) on the date sent by facsimile or e-mail of a PDF document if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, in each case, at the following addresses, facsimile numbers, and E-mail addresses (or to such other address, facsimile number, or E-mail address for a Party as specified in a notice given in accordance with this Section 10.2).

If to the Sellers, to the addresses set forth on Schedule A attached hereto.

If, to the Purchaser and as a copy if to the Company following the Closing, to:

Immuneering Corporation
245 Main Street, Second Floor
Cambridge, MA 02142
Attention: Michael Bookman
Email: mbookman@immuneering.com

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

Latham & Watkins LLP
200 Clarendon Street, 27th Floor
Boston, MA 02116
Attention: Evan Smith
Telephone: (617) 948-6089
Email: evan.smith@lw.com

10.3 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transaction are consummated as originally contemplated to the greatest extent possible.

10.4 Entire Agreement. This Agreement and the other Transaction Documents (including all exhibits, appendices and schedules appended hereto and thereto) constitute the entire understanding and agreement between the Parties with respect to the Transaction and supersede all prior understandings and agreements, both written and oral, among the Parties with respect to the Transaction.

10.5 Successors and Assigns; Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign its rights or obligations hereunder without the prior written consent of each of the other Parties; provided, however, that nothing in this Agreement shall prohibit or restrict the assignment of (a) the Purchaser's rights (but not obligations) to any lender and (b) the Purchaser's rights and obligations to any transferee of the Equity Interests of the Company who agrees to accept such rights and obligations in connection with such transfer.

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

10.7 Tax Advice. Each Party acknowledges and agrees that it has not received and is not relying upon Tax advice from any other Party, and that it has and will continue to consult its own advisors with respect to Taxes.

10.8 Equitable Remedies. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement, to specific enforcement of the terms and provisions hereof and other equitable remedies this being in addition to any other remedy to which they are entitled at law or in equity.

10.9 Amendment and Modification; Waivers. This Agreement may not be modified or amended, except by a written instrument signed by or on behalf of each of the Parties. The terms of this Agreement may only be waived by a written instrument signed by or on behalf of the Party waiving compliance. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party 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 of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

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

(a) This Agreement, and all Legal Proceedings based upon, arising out of, or related to this Agreement or the Transaction, shall be exclusively governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to principles or rules of conflict of Laws to the extent such principles or rules would require or permit the application of the Laws of another jurisdiction, except with respect to any matter relating to the Company's jurisdiction of incorporation that requires the application of the Laws of the State of California, in which case the Laws of the State of California shall govern.

(b) Each of the Parties agrees that any dispute, controversy or claim arising out of or relating to this Agreement or the Transaction, or the validity, interpretation, breach or termination thereof, including claims seeking redress or asserting rights under any Law, shall be resolved exclusively in the courts of the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction, the Superior Court of the State of Delaware or the Federal District Court of the District of Delaware located in Wilmington, Delaware) and appellate courts having jurisdiction of appeals from such courts. In that context, and without limiting the generality of the foregoing, each Party irrevocably and unconditionally:

(i) submits, for itself and its property, in any action relating to this Agreement or the Transaction, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of such courts, and appellate courts having jurisdiction of appeals from any of the foregoing courts, and agrees that all claims in respect of any such action shall be heard and determined in such courts or, to the extent permitted by Law, in such appellate courts;

(ii) consents that any such action may and shall be brought exclusively in such courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such action in any such court or that such action was brought in an inconvenient forum, and agrees not to assert, plead or claim the same;

(iii) agrees that the final judgment of such court shall be enforceable in any court having jurisdiction over the relevant Party or any of its assets;

(iv) agrees that service of process in any such action may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address as provided in Section 10.2; and

(v) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by the applicable rules of procedure.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION, DIRECTLY OR INDIRECTLY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10.

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

[Signature Pages to Follow]

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

PURCHASER:

IMMUNEERING CORPORATION

By: /s/ Benjamin Zeskind

Name: Benjamin Zeskind

Title: President and Chief Executive Officer

[Signature Pages to Share Purchase Agreement]

THE SELLERS:

/s/ Brett Hall
Brett Hall

/s/ Praveen Nair
Praveen Nair

/s/ Daniel Flynn
Daniel Flynn

/s/ Thomas Barr
Thomas Barr

/s/ Anna Travesa
Anna Travesa

/s/ Dennis Garland
Dennis Garland

[Signature Pages to Share Purchase Agreement]

THE COMPANY:

BIOARKIVE, INC.

By: /s/ Praveen Nair
Name: Praveen Nair
Title: Chief Executive Officer

[Signature Pages to Share Purchase Agreement]

Schedule A

Seller Equity Information

Seller and Address	Total Number of Common Shares Owned Prior to Closing	Seller's Pro Rata Share
Brett Hall	8,500	85%
Praveen Nair	1,000	10%
Daniel Flynn	125	1.25%
Thomas Barr	125	1.25%
Anna Travesa	125	1.25%
Dennis Garland	125	1.25%
Total:	10,000	100%

DISCLOSURE SCHEDULES
delivered in connection with the
SHARE PURCHASE AGREEMENT

by and among

BioArkive, Inc.,

the Sellers Listed on the Signature Pages Hereto,

and

the Purchaser

Dated as of December 22, 2021

INTRODUCTION

This document and the attachments hereto (which are incorporated herein by this reference) are being delivered in connection with the execution and delivery of the Share Purchase Agreement, dated as of the date hereof (the “**Agreement**”) by and among BioArkive, Inc., a corporation incorporated pursuant to the laws of California (the “**Company**”), (b) the Sellers listed on the signature pages hereto (each individually a “**Seller**”, and collectively, the “**Sellers**”), and (c) Immuneering Corporation, a corporation incorporated pursuant to the laws of Delaware (the “**Purchaser**”), and constitutes the Schedules (the “**Disclosure Schedules**”) referenced therein. Capitalized terms used and not otherwise defined herein shall have the meanings given to such terms in the Agreement, and section references are to sections of the Agreement.

The Disclosure Schedules cover matters concerning the business of the Company, and set forth exceptions to the representations, warranties and other agreements made by the Sellers or the Company in the Agreement, and are intended to qualify such representations, warranties and agreements. The Disclosure Schedules are qualified in its entirety by reference to the specific provisions of the Agreement and the representations, warranties and agreements to which the disclosures herein pertain and are not intended to constitute, and shall not be construed to constitute, any separate representation, warranty or agreement of the Sellers or the Company, or as broadening or expanding the representations, warranties or agreements of the Sellers contained in the Agreement.

Notwithstanding anything to the contrary in these Disclosure Schedules, any matter disclosed in any section or subsection of the Disclosure Schedules shall be deemed disclosed for the purposes of, and shall qualify, each representation and warranty in the section or subsection of the Agreement with the corresponding number, as well as any other representation or warranty in any other section or subsection of the Agreement where the relevance of such disclosure to that other representation or warranty is reasonably apparent on its face, in each case even if (a) that other representation or warranty does not reference the Disclosure Schedules or (b) the disclosure in the Disclosure Schedules does not reference that other representation or warranty. The disclosure of a particular item of information in the Disclosure Schedules shall not constitute an admission by the Sellers or the Company that such item is material, that such item has had or would have a Material Adverse Effect or that the disclosure of such item is required to be made under the terms of the Agreement, except to the extent provided by the Agreement. To the extent that a disclosure in the Disclosure Schedule makes reference to or describes all or any part of a Contract or other document, Permit, license, Order or applicable Law, such reference or description is qualified in its entirety by the terms and provisions of such Contract or other document, Permit, license, Order or applicable Law.

No disclosure in this Disclosure Schedules relating to any possible noncompliance, breach or violation of any Contract or other document, Permit, license, Order or applicable Law shall be construed as an admission or indication that any such noncompliance, breach or violation exists or has actually occurred, and nothing in this Disclosure Schedules shall constitute an admission of any liability or obligation of the Sellers or the Company to any third party or shall confer or give to any third party any remedy, claim, liability, reimbursement, cause of action or other right.

The Disclosure Schedules and all information contained herein is confidential and is subject to the terms of the Agreement regarding the treatment of Confidential Information.

SCHEDULE 3.3(a)

THIRD PARTY CHANGE OF CONTROL

MJV Properties LP, Lessor as to triple net commercial lease agreement dated 1/23/19 with BioArkive, LLC and Trans Sciences, LLC as Lessee with a 5-year term commencing on 4/1/19 and ending 3/31/24 for the real property commonly known as 11421 W. Bernardo Court, Suite 200, San Diego CA 92127 with base monthly rent as follows:

04/01/19 to 03/31/20 \$4,250.00;
04/01/20 to 03/31/21 \$4,400.00;
04/01/21 to 03/31/22 \$4,550.00;
04/01/22 to 03/31/23 \$4,650.00; and
04/01/23 to 03/31/24 \$4,800.00.

Heath Family Decedents Trust, Lessor as to triple net commercial lease agreement dated 11/1/19 with BioArkive, LLC and Trans Sciences, LLC as Lessee with a 3-year term commencing on 1/1/20 and ending 12/31/22 for the real property commonly known as 11403 Bernardo Court, Suite 100, San Diego CA 92127 with base monthly rent as follows:

10/01/20 to 12/31/20 \$5,764.50;
01/01/21 to 12/31/21 \$6,000.00; and
01/01/22 to 12/31/22 \$6,200.00.

Thornmint 13, LLC, Lessor as to triple net commercial lease agreement dated 7/22/21 with BioArkive, Inc. as Lessee with a 10-year 7-month term commencing on 10/1/21 and ending 4/30/32 for the real property commonly known as 11403 Bernardo Court, Suite 100, San Diego CA 92127 with base monthly rent as follows:

10/01/21 to 10/31/21 \$55,990.00;
11/01/21 to 09/31/22 \$27,995.00;
10/01/22 to 12/31/22 \$28,835.00;
01/01/22 to 09/30/23 \$57,670.00;
10/01/23 to 09/30/24 \$59,400.00;
10/01/24 to 09/30/25 \$61,182.00;
10/01/25 to 09/30/26 \$63,017.00;
10/01/26 to 09/20/27 \$64,908.00;
10/01/27 to 09/30/28 \$66,855.00;
10/01/28 to 09/30/29 \$68,861.00;
10/01/29 to 09/30/30 \$76,926.00;
10/01/30 to 09/30/31 \$73,054.00; and
10/01/31 to 04/30/32 \$75,246.00.

SCHEDULE 3.3(b)

GOVERNMENTAL CHANGE OF CONTROL

None.

SCHEDULE 3.7

UNDISCLOSED LIABILITIES

(a)

None.

(b)

None.

SCHEDULE 3.8

CHANGES

The following disclosure (and any reference hereto) is listed as an exception to Section 3.8(b) of the Agreement:

Effective 12/01/2021 ownership of the Company is as follows:

BRETT HALL	8,500 shares
PRAVEEN NAIR	1,000 shares
DENNIS GARLAND	125 shares
THOMAS BARR	125 shares
DANIEL FLYNN	125 shares
ANNA TRAVESA	125 shares

SCHEDULE 3.9(a)
MATERIAL CONTRACTS

(viii)

Republic Services – customer service agreement dtd 9/29/21
Ponderosa Landscape Service –maintenance agreement dtd 9/20/21
Cali Cleaning Service – janitorial service agreement dtd 9/23/21
Lloyd Pest Control – monthly service agreement dtd 10/01/21
Advanced Chemical Transport Inc. – MSA dtd 1/1/21
Paychex – payroll service agreement dtd 3/19/20
Ranch & Coast Security – alarm sales/monitoring agreement dtd 10/15/21

(xiv)

MJV Properties LP, Lessor as to triple net commercial lease agreement dated 1/23/19
Heath Family Decedents Trust, Lessor as to triple net commercial lease agreement dated 11/1/19
Thornmint 13, LLC, Lessor as to triple net commercial lease agreement dated 7/22/21

(xv)

Takeda Pharmaceuticals Company Limited - MSA dtd 5/4/20
Inhibrix - material transfer agreement dtd 4/13/21
Immuneering Corp – material transfer agreement dtd 5/7/20
CSL Behring LLC – confidentiality agreement dtd 1/19/21
CellCarta Fremont LLC – material transfer agreement dtd 5/27/21
Immuneering Corp – MSA dtd 8/5/19

SCHEDULE 3.11(b)

LEASED REAL PROPERTY

MJV Properties LP, Lessor as to triple net commercial lease agreement dated 1/23/19 with BioArkive, LLC and Trans Sciences, LLC as Lessee with a 5-year term commencing on 4/1/19 and ending 3/31/24 for the real property commonly known as 11421 W. Bernardo Court, Suite 200, San Diego CA 92127 with base monthly rent as follows:

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04/01/21 to 03/31/22 \$4,550.00;
04/01/22 to 03/31/23 \$4,650.00; and
04/01/23 to 03/31/24 \$4,800.00.

Heath Family Decedents Trust, Lessor as to triple net commercial lease agreement dated 11/1/19 with BioArkive, LLC and Trans Sciences, LLC as Lessee with a 3-year term commencing on 1/1/20 and ending 12/31/22 for the real property commonly known as 11403 Bernardo Court, Suite 100, San Diego CA 92127 with base monthly rent as follows:

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10/01/21 to 10/31/21 \$55,990.00;
11/01/21 to 09/31/22 \$27,995.00;
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01/01/22 to 09/30/23 \$57,670.00;
10/01/23 to 09/30/24 \$59,400.00;
10/01/24 to 09/30/25 \$61,182.00;
10/01/25 to 09/30/26 \$63,017.00;
10/01/26 to 09/20/27 \$64,908.00;
10/01/27 to 09/30/28 \$66,855.00;
10/01/28 to 09/30/29 \$68,861.00;
10/01/29 to 09/30/30 \$76,926.00;
10/01/30 to 09/30/31 \$73,054.00; and
10/01/31 to 04/30/32 \$75,246.00.

SCHEDULE 3.12(a)
COMPANY OFFERINGS

None.

SCHEDULE 3.12(b)

REGISTERED IP

The Company name.

SCHEDULE 3.12(e)

NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY

None.

SCHEDULE 3.12(f)

NO INFRINGEMENT OF COMPANY INTELLECTUAL PROPERTY

None.

SCHEDULE 3.12(h)
COMPANY SOFTWARE

None.

SCHEDULE 3.15(a)
COMPLIANCE WITH LAWS

None.

SCHEDULE 3.15(c)

PERMITS

(i)

City of San Diego Business License

Biorepository Accreditation Program certification

ISO 20387 biobanking accreditation certification

(ii)

None.

SCHEDULE 3.17(f)
PERSONNEL MATTERS

None.

SCHEDULE 3.18

EMPLOYEE BENEFIT PLANS

(a)

401(k) PLAN

Blue Shield Health Insurance

CBDR Dental Insurance

CBDR Vision Insurance

CBDR Life Insurance

(f)

None.

SCHEDULE 3.20(b)

MATERIAL CUSTOMERS

Alleo

Amprion

Antharis Therapeutics

Blue Water Vaccines, Inc

BNI San Diego – Ed Wilson

Camino Pharma LLC

Celll Carta

Eikonoklastes Therapeutics Inc

Ethos Discovery

Immuneering Corporation

INHIBRx

Konica Minolta, Inc.

M2 Ingredients, Inc.

Scientist.com

StoreMy Tumor

VigilDX

SCHEDULE 3.21

INSURANCE

Choice Builder (Dental, Vision and Life), Group # B12808

Blue Shield California (Health), Account W01060631000

State Compensation Insurance Fund (Workman's Comp), Policy 9247183-21

Chubb Auto, Policy # 000073608535

Chubb CustomARQ Package, Policy # 000036059065

Chubb CustomARQ General Liability, Policy # 000036059066

Aspen American Insurance (Builders Risk for Thornmint 13), Policy # 2898728

Hudson Insurance Company (Deans & Homer) 10864 THORNMINT RD Premier Building Package Policy Policy # 2902639

SCHEDULE 3.23

BANK ACCOUNTS

[Omitted]



**STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)**

1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only July 22, 2021, is made by and between Thornmint 13, LLC, a California limited liability company ("Lessor") and BioArkive, Inc., a California corporation ("Lessee"), collectively the "Parties," or individually a "Party".

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, city, state, zip): 10864 Thornmint Road, CA 92127 ("Premises"). The Premises are located in the County of San Diego, and are generally described as (describe briefly the nature of the property and, if applicable, the "Project," if the property is located within a Project): An approximately 38,613 rentable square foot ("RSF") building (the "Premises"), located at 10864 Thornmint Road, San Diego, CA 92127. (See also Paragraph 2)

1.3 **Term:** 10 years and 7 months ("Original Term") commencing October 1, 2021 ("Commencement Date") and ending April 30, 2032 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing full execution of a Lease, providing prepaid rent and security deposit, providing liability insurance naming the Landlord as additional insured, to perform tenant improvements and prepare the building for occupancy. Occupancy and conducting of business shall be upon substantial completion of tenant improvements ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$55,990.00 per month ("Base Rent"), payable on the first day of each month commencing October 1, 2021. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 54.

1.6 Base Rent and Other Monies Paid Upon Execution:

(a) **Base Rent:** \$55,990.00 for the period October 1-31, 2021.

(b) **Security Deposit:** \$75,246.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** _____ for the period _____.

(d) **Other:** \$11,703 for October 1-31, 2021 (NNN Operating Expenses).

(e) **Total Due Upon Execution of this Lease:** _____.

1.7 **Agreed Use:** The Property shall be used for General office, Laboratory, Incubator and Biobanking space. (See also Paragraph 6)

1.8 **Insuring Party.** Lessor is the "Insuring Party" unless otherwise stated herein. (See also Paragraph 8)

1.9 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)"): Lessor's Brokerage Firm Colliers International CA, Inc., Colliers International License No. 01908588 is the broker of (check one): the Lessor; or both the Lessee and Lessor (dual agent).

Lessor's Agent David Harper License No. 00880644 is (check one): the Lessor's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Horizon Resources, Inc. License No. _____ Is the broker of (check one): the Lessee; or both the Lessee and Lessor (dual agent).

Lessee's Agent Nehal Wadhwa License No. _____ is (check one): the Lessee's Agent (salesperson or broker associate); or both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers.** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.~~

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

an Addendum consisting of Paragraphs 51 through 66;

a plot plan depicting the Premises; Exhibit A

a current set of the Rules and Regulations;

a Work Letter;

other (specify): _____.

DS INITIALS

DS INITIALS

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense. Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or

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Handwritten initials "NIP/MS" and "BH" in boxes labeled "DS".

partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 **Delay in Possession.** Lessor agrees to use commercially reasonable efforts to deliver exclusive possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Insurance and Real Property Taxes, and any remaining amount to any other outstanding charges or costs.

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any



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STN-27.30, Revised 10-22-2020



Last Edited: 7/22/2021 12:33 PM

Page 3 of 16

Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. In addition, Lessee shall provide Lessor with copies of its business license, certificate of occupancy and/or any similar document within 10 days of the receipt of a written request therefor.

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1(e)) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of a written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall

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STN-27.30, Revised 10-22-2020

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Page 4 of 16

in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations. See Addendum

7.1 Lessee's Obligations.

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), foundations, ceilings, roofs, roof drainage systems, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) roof covering and drains, and (vi) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.



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STN-27.30, Revised 10-22-2020



Last Edited: 7/22/2021 12:33 PM

Page 5 of 16

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment For Insurance.** Lessee shall pay for all insurance required under Paragraph 8 except to the extent of the cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of \$2,000,000 per occurrence. Premiums for policy periods commencing prior to or extending beyond the Lease term shall be prorated to correspond to the Lease term. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a "Waiver of Subrogation" endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of

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renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease,

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Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2 **Payment of Taxes.** In addition to Base Rent, Lessee shall pay to Lessor an amount equal to the Real Property Tax installment due at least 20 days prior to the applicable delinquency date. If any such installment shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such installment shall be prorated. In the event Lessee incurs a late charge on any Rent payment, Lessor may estimate the current Real Property Taxes, and require that such taxes be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payments shall be an amount equal to the amount of the estimated installment of taxes divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable tax bill is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable taxes. If the amount collected by Lessor is insufficient to pay such Real Property Taxes when due, Lessee shall pay Lessor, upon demand, such additional sum as is necessary. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

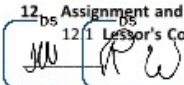
10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.**

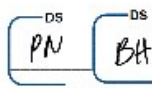
11.1 Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

11.2 Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

12. **Assignment and Subletting.**
12.1 **Lessor's Consent Required.**



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STN-27.30, Revised 10-22-2020

Last Edited: 7/22/2021 12:33 PM

Page 8 of 16

- (a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.
- (b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.
- (c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.
- (d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.
- (e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.
- (f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.
- (g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

- (a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.
- (b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.
- (c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.
- (d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.
- (e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)
- (f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.
- (g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

- (a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.
- (b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.
- (c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.
- (d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.
- (e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

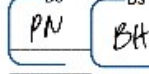
13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

- (a) The abandonment of the Premises; the vacating of the Premises prior to the expiration or termination of this Lease without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism; or failure to deliver to Lessor exclusive possession of the entire Premises in accordance herewith prior to the expiration or termination of this Lease.



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STN-27.30, Revised 10-22-2020



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Page 9 of 16

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

3.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact

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amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed. The provisions of this paragraph are intended to supersede the provisions of any earlier agreement to the contrary.

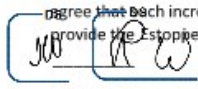
15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents, if any) in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

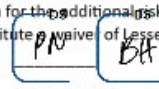
(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide



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STN-27.30, Revised 10-22-2020



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Last Edited: 7/22/2021 12:33 PM

Page 11 of 16

the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23.3 Options. Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

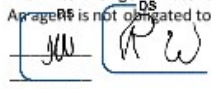
(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

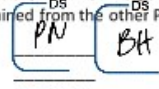
25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth


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above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. At or prior to the expiration or termination of this Lease Lessee shall deliver exclusive possession of the Premises to Lessor. For purposes of this provision and Paragraph 13.1(a), exclusive possession shall mean that Lessee shall have vacated the Premises, removed all of its personal property therefrom and that the Premises have been returned in the condition specified in this Lease. In the event that Lessee does not deliver exclusive possession to Lessor as specified above, then Lessor's damages during any holdover period shall be computed at the amount of the Rent (as defined in Paragraph 4.1) due during the last full month before the expiration or termination of this Lease (disregarding any temporary abatement of Rent that may have been in effect), but with Base Rent being 150% of the Base Rent payable during such last full month. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located. Signatures to this Lease accomplished by means of electronic signature or similar technology shall be legal and binding.

30. Subordination; Attornment; Non-Disturbance.

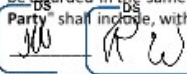
30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

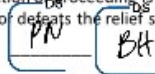
31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise,



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STN-27.30, Revised 10-22-2020



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Page 13 of 16

settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any Option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

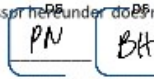
(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations.

41. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security



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STN-27.30, Revised 10-22-2020

Last Edited: 7/22/2021 12:33 PM

Page 14 of 16

measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS LEASE.

49. Arbitration of Disputes. An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease is is not attached to this Lease.

50. Accessibility; Americans with Disabilities Act.

(a) The Premises:

have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.


have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

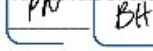
(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:



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STN-27.30, Revised 10-22-2020

Page 15 of 16

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:
On: 7/24/2021 | 8:13 PDT

By LESSOR:
Thornmint 13, LLC, , a California limited liability company

By: John Weersing
Name Printed: John Weersing
Title: Member
Phone: _____
Fax: _____
Email: _____

DocuSigned by:
Rebecca Weersing
Name Printed: Rebecca Weersing
Title: Member
Phone: _____
Fax: _____
Email: _____

Address: _____
Federal ID No.: _____

BROKER
Colliers International CA, Inc., Colliers International

Attn: David Harper
Title: Senior Vice President
Address: 4350 La Jolla Village Drive, Suite 500, San Diego, CA 92122
Phone: 858-677-5331
Fax: _____
Email: david.harper@colliers.com
Federal ID No.: _____
Broker DRE License #: 01908588
Agent DRE License #: 00880644

Executed at:
On: 7/23/2021 | 1:02 PDT

By LESSEE:
BioArkive, Inc, a California corporation

By: Brett Hall
Name Printed: Brett Hall
Title: CFO
Phone: _____
Fax: _____
Email: _____

DocuSigned by:
Praveen Nair
Name Printed: Praveen Nair
Title: CEO
Phone: _____
Fax: _____
Email: _____

Address: 10720 Thornmint Road, San Diego, CA 92127
Federal ID No.: _____

BROKER
Horizon Resources, Inc.

Attn: Nehal Wadhwa
Title: _____
Address: 2260 Rutherford Road, Suite 211, San Diego, CA 92008
Phone: (760) 692-5205
Fax: _____
Email: Nehal@horizonresourcesinc.com
Federal ID No.: _____
Broker DRE License #: _____
Agent DRE License #: _____

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ADDENDUM TO AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – NET

This Addendum to AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease - Net (“Addendum”) is made and entered into to be effective as of this 22nd day of July, 2021, by and between Thornmint 13, LLC, a California limited liability company (“Lessor”) and BioArkive, Inc., a California corporation (“Lessee”).

RECITALS

WHEREAS, Lessor and Lessee have entered into that certain AIR Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease – Net between them of even date herewith (the “Lease”), concerning that certain real property in San Diego, California, commonly known as 10864 Thornmint, California 92127 consisting of an approximately 38,613 square foot single tenant industrial building;

WHEREAS, the parties wish to amend certain matters set forth in the Lease, and accordingly execute this Addendum.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for the mutual covenants contained herein, the parties hereto agree as follows:

- 51. Definitions. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Lease.
- 52. Conflicts. In the event of any conflict between the provisions of this Addendum and the provisions of the Lease, this Addendum shall control.
- 53. Early Possession Date (Section 1.4). Section 1.4 of the Lease shall be deleted in its entirety and shall be replaced with the following:

“If the Premises are available, Lessee may have non-exclusive possession of the Premises commencing upon the occurrence of all of the following: (i) execution of the Lease and this Addendum by Lessor and Lessee, (ii) Lessee’s payment to Lessor of the amount set forth in Section 1.6(e) of the Lease, and (iii) Lessee’s delivery to Lessor of a certificate of general liability insurance in the amount set forth in the Lease. Lessor to pay no penalty for delay in occupancy.”

Lease Addendum
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Page 1 of 1 DS
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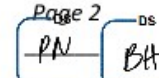
54. (a) Rent Escalation. The Base Rent, as set forth in Section 1.6(a) of the Lease shall be payable, and shall increase, as follows:

Year 01:	10/01/21 – 10/31/21: \$55,990.00 NNN
	11/01/21 – 09/31/22: \$27,995.00 NNN (subject to Section 54(b) below)
Year 02:	10/01/22 – 12/31/22: \$28,835.00 NNN (subject to Section 54(b) below)
	01/01/22 – 09/30/23: \$57,670.00 NNN
Year 03:	10/01/23 – 09/30/24: \$59,400.00 NNN
Year 04:	10/01/24 – 09/30/25: \$61,182.00 NNN
Year 05:	10/01/25 – 09/30/26: \$63,017.00 NNN
Year 06:	10/01/26 – 09/30/27: \$64,908.00 NNN
Year 07:	10/01/27 – 09/30/28: \$66,855.00 NNN
Year 08:	10/01/28 – 09/30/29: \$68,861.00 NNN
Year 09:	10/01/29 – 09/30/30: \$70,926.00 NNN
Year 10:	10/01/30 – 09/30/31: \$73,054.00 NNN
Year 11:	10/01/31 – 04/30/32: \$75,246.00 NNN

(b) Rental Abatement. Notwithstanding anything to the contrary contained in the Lease, and provided that Lessee faithfully performs all of the terms and conditions of the Lease, Lessor hereby agrees to abate Lessee's obligation to pay half of the Base Rent for the months of November 2021 through December 2022. During such abatement period, Lessee shall still be responsible for the payment of all of its other monetary obligations under the Lease. In the event of a default by Lessee under the terms of the Lease that results in early termination pursuant to the provisions of Section 13.1 of the Lease, then as part of the recovery set forth in Section 13.2, Lessor shall be entitled to the recovery of the Base Rent that was abated under the provisions of this Section 54. The amount of Base Rent to be abated pursuant to this Section 54 may be referred to herein as the "Abated Rent Amount." Notwithstanding the foregoing or anything to the contrary contained herein, upon written notice to Lessee, Lessor shall have the option to satisfy all or any portion of Lessee's Abated Rent Amount by paying such amount to Lessee, in which case the amount so paid to Lessee shall nullify an equivalent amount of abatement of Lessee's Base Rent as to the period so designated by Lessor in Lessor's written notice to Lessee.

55. Option to Extend the Lease. Lessee shall have the right and option to renew the Lease ("Renewal Option") for one (1) additional period of ten (10) years (the "Option Term"); provided, however, the Renewal Option is contingent upon the following: (i) Lessee is not in default beyond any applicable notice and cure period provided for herein at the time Lessee gives Lessor notice of Lessee's intention to exercise the Renewal Option; (ii) upon the Expiration Date, Lessee has no outstanding default beyond any applicable notice and cure period provided for herein; (iii) no event has occurred that upon notice or the passage of time would constitute a default; and (iv) Lessee is occupying the Premises. Following the expiration of the Option Term, Lessee shall have no further right to renew the Lease.

~~Lease Addendum~~

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Page 2 ^{DS}

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Lessee shall exercise the Renewal Option by giving Lessor notice at least nine (9) months, but not more than twelve (12) months, prior to the Expiration Date. If Lessee fails to give notice to Lessor prior to such nine (9) month period or provides written notice more than twelve (12) months prior to the Expiration Date, then Lessee shall forfeit the Renewal Option. If Lessee exercises timely the Renewal Option, then during the Option Term, Lessor's and Lessee's respective rights, duties and obligations shall be governed by the terms and conditions of the Lease, except as provided otherwise herein. Time is of the essence in exercising the Renewal Option. If Lessee exercises timely the Renewal Option, then during the Option Term, all references to the term "Term", as used in the Lease, shall mean the "Option Term".

The Minimum Base Rent for the Option Term shall be the Fair Market Rental Rate. The term "Fair Market Rental Rate" shall mean an amount equal to the greater of the Minimum Base Rent applicable for the Premises during the last year of the Term and the market rental rate for the time period such determination is being made for similar Flex/R&D/Corporate buildings with equivalent parking in the Rancho Bernardo, California area within a five (5) mile radius, to include rental rate, rent increase (the "AREA") of comparable condition and of equivalent quality, size, utility, and location. Lessor shall deliver to Lessee notice of the Fair Market Rental Rate (the "FMR Notice") for the Premises for the Option Term within ten (10) days after Lessee exercises the Option. If Lessee disagrees with Lessor's assessment of the Fair Market Rental Rate specified in the FMR Notice, then it shall so notify Lessor in writing within ten (10) days after delivery of the FMR Notice; otherwise, the rate set forth in the FMR Notice shall be the Fair Market Rental Rate. If Lessee timely delivers to Lessor notice that Lessee disagrees with Lessor's assessment of the Fair Market Rental Rate, then Lessor and Lessee shall meet to attempt to determine the Fair Market Rental Rate. If Lessee and Lessor are unable to agree on such Fair Market Rental Rate within ten (10) days after Lessee notifies Lessor of Lessee's disagreement with Lessor's assessment thereof, then Lessor and Lessee shall each appoint an independent real estate appraiser with an MAI designation and with at least ten (10) years' commercial real estate appraisal experience in the AREA market. The two appraisers shall then, within ten (10) days after their designation, select an independent third appraiser with like qualifications. Within twenty (20) days after the selection of the third appraiser, a majority of the appraisers shall determine the Fair Market Rental Rate. If a majority of the appraisers is unable to agree upon the Fair Market Rental Rate by such time, then the two (2) closest appraisals shall be averaged and the average will be the Fair Market Rental Rate. Lessee and Lessor shall each bear the entire cost of the appraiser selected by it and shall share equally the cost of the third appraiser. In no event shall the Fair Market Rental Rate be less than one hundred three percent (103%) of the Minimum Base Rent applicable for the Premises during the last year of the Term, together with a minimum of three percent (3%) annual increases to the Minimum Base Rent.

If Lessee has exercised the Renewal Option and the Fair Market Rental Rate for the applicable Option Term has not been determined as provided herein by the time that Rent for the applicable Option Term is to commence in accordance with the terms hereof, then Lessee shall pay Rent for the applicable Option Term based on the Fair Market Rental

Lease Addendum

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Page 3
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Rate proposed by Lessor pursuant to the terms hereof until such time as the Fair Market Rental Rate has been so determined, at which time appropriate cash adjustments shall be made between Lessor and Lessee such that Lessee is charged Rent based on the Fair Market Rental Rate (as finally determined pursuant to the terms hereof) for the Option Term.

- 56. Broker Commission. Section 1.9(b) and Section 15 of the Lease shall be deleted in their entirety and Section 1.9(b) shall be replaced with the following: "Lessor shall pay a brokerage commission to Lessor's broker pursuant to a separate agreement between them."
- 57. Lessor Warranty. The warranty described in Section 2.2 of the Lease is hereby modified to provide that Lessor shall warranty the Premises' roof, mechanical, electrical and plumbing systems for the initial thirty-six (36) months of the Lease Term; provided, however, Lessee shall remain fully responsible for any and all costs and expenses related to such systems caused by the negligence or willful misconduct of Lessee.
- 58. Maintenance, Repairs, Utility Installations, Trade Fixtures and Alterations. The following is hereby added to Section 7 of the Lease:

Notwithstanding anything in Section 7 of the Lease to the contrary:

- (1) Starting in year four (4) of the Lease Term, Lessee's responsibility for repairs to the Premises' HVAC system (not including the cost of the Service Contracts referenced in Section 7.1(b) of the Lease) shall be capped at Five Thousand Dollars (\$5,000.00) per Lease year on a non-cumulative basis (i.e., the Five Thousand Dollar (\$5,000.00) cap on the Premises' HVAC system repairs shall reset each Lease year). Anything over the cap, Landlord will pay.
- (2) Starting in year four (4) of the Lease Term, Lessee's responsibility for repairs to the Premises' roof (including, without limitation, roof support system, roof membrane, and roof drainage systems) shall be capped at Three Thousand Five Hundred Dollars (\$3,500.00) per Lease year on a non-cumulative basis (i.e., the Three Thousand Five Hundred Dollar (\$3,500.00) cap on the Premises' roof shall reset each Lease year). Anything over the cap, Landlord will pay.
- (3) Lessee shall be solely responsible for any and all costs and expenses incurred in connection with the sealing and re-painting of the Premises' parking lot once during the Lease Term and once during any Option Term.
- (4) Lessee shall not be responsible for painting the outside of the Building.
- (5) If, and to the extent, an item described in Section 7.1(b) of the Lease cannot be repaired other than at a cost in excess of twenty-five percent (25%) of the replacement cost of such item then, in such event, the item

Lease Addendum
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Page 4 DS

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shall be replaced by Lessor, and the cost thereof shall be prorated between Lessor and Lessee such that Lessee shall only be obligated to pay, each month during the remainder of the Lease Term and any Option Term, on the same date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e., 1/144th of the replacement cost per month remaining in the Lease Term and any applicable Option Term).

59. Utilities, Services and Operating Expenses. The following is hereby added to Section 11 of the Lease:

“The utilities, services and other operating expenses for the Building are currently running approximately \$0.31/SF. Lessee shall pay one hundred percent (100%) of such utilities, services and other operating expenses for the Building including, but not limited to real property taxes, insurance, property management (currently running three percent (3%)), association costs, maintenance, including repairs and servicing of HVAC, and fire sprinkler systems, property management, and security costs. Following the written agreement between Lessor and Lessee some of these costs may be paid directly and others are charged on an estimated monthly basis.”

60. Signage. Lessee shall have all sign rights pertaining to the Premises and the Building including any monument sign at the street, if any, and shall pay all costs of design, fabrication and installation, and eventual removal upon expiration or earlier termination of the Lease, all at Lessee’s sole expense. Prior to installation of any signs or signage of any kind, Lessee shall submit plans therefor to Lessor for approval (which may be granted, withheld, conditioned or delayed in Lessor’s sole discretion). Thereafter, Lessee shall obtain any and all required approvals by the 4-S Ranch Business Park Corporation and/or County, again at Lessee’s sole expense.

61. Tenant Improvements. Tenant Improvements for the Building shall be constructed and paid for as set forth in the Work Letter Agreement attached hereto as Exhibit “A” and which is incorporated herein by this reference as set forth in full.

62. Rent Paid In Advance. Notwithstanding anything contained in the Lease to the Contrary, all Rent (including Base Rent and any other monetary obligations of the Lessee) shall be payable in advance on the first day of each calendar month together with the Base Rent.

63. Disclosure of Agency Relationship. Section 25 of the Lease is hereby deleted in its entirety.

64. Certified Access Specialist. Section 50(a) of the Lease is hereby deleted in its entirety and hereby replaced with the following:

Lessor hereby advises Lessee that the Premises and the Building have not undergone an inspection by a certified access specialist. The following disclosure is hereby made pursuant to applicable California law:

Lease Addendum
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INITIALS

Page 5^{DS}
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INITIALS

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premise comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree upon the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.”

65. Use Restrictions. The following uses, operations and associated equipment are not allowed without Lessor’s prior written consent, which consent may be withheld, conditioned, or delayed in Lessor’s sole and absolute discretion:
- a. Electroplating processes;
 - b. Chemical etching processes;
 - c. Paint booths;
 - d. Open chemical cleaning systems;
 - e. Punch press operations;
 - f. Open mills and lathes (15 hp and above);
 - g. Turret lathe processes;
 - h. Metal spray processes;
 - i. Freon cleaning processes;
 - j. Equipment that requires “through” bolting to the concrete floor; and
 - k. Fixture welding processes.
66. Title 24 Modifications. Lessee intends to have a generator installed at the Premises within the first year of the Lease Term. In the event that a permit application submitted to the County by Lessee within the first year of the Lease Term related to the installation of a generator at the Premises results in a requirement by the County to modify the Premises to comply with Title 24 of the California Code of Regulations (whether pertaining to physical access regulations or energy efficiency regulations), the following shall apply: (a) Lessee shall be responsible for that portion of the cost of the modifications to the Premises that relate directly to the installation of a generator at the Premises; and (b) Lessor shall be responsible for that portion of the cost of the modifications to the Premises, if any, that do not relate directly to the installation of a

Lease Addendum
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Page 6 ^{DS}
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INITIALS

generator at the Premises. Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises or the Building to comply with Title 24 of the California Code of Regulations (either for physical access or energy efficiency issues or conditions) arising from any permit application submitted to the County by Lessee after the first year of the Lease Term.

IN WITNESS WHEREOF, the parties have executed this Amendment to be effective as of the date and year first above written.

“LESSOR”

THORNMINT 13, LLC, a
California limited liability company

By: DocuSigned by:
John Weersing
John Weersing, Member
Date: 7/24/2021 | 8:13 PDT

By: DocuSigned by:
Rebecca Weersing
Rebecca Weersing, Member
Date: 7/25/2021 | 1:16 PDT

“LESSEE”

BIOARKIVE, INC.,
a California corporation

By: DocuSigned by:
Brett Hall
Brett Hall, CFO
Date: 7/23/2021 | 1:02 PDT

By: DocuSigned by:
Praveen Nair
Praveen Nair, CEO
Date: 7/23/2021 | 2:54 PDT

Lease Addendum

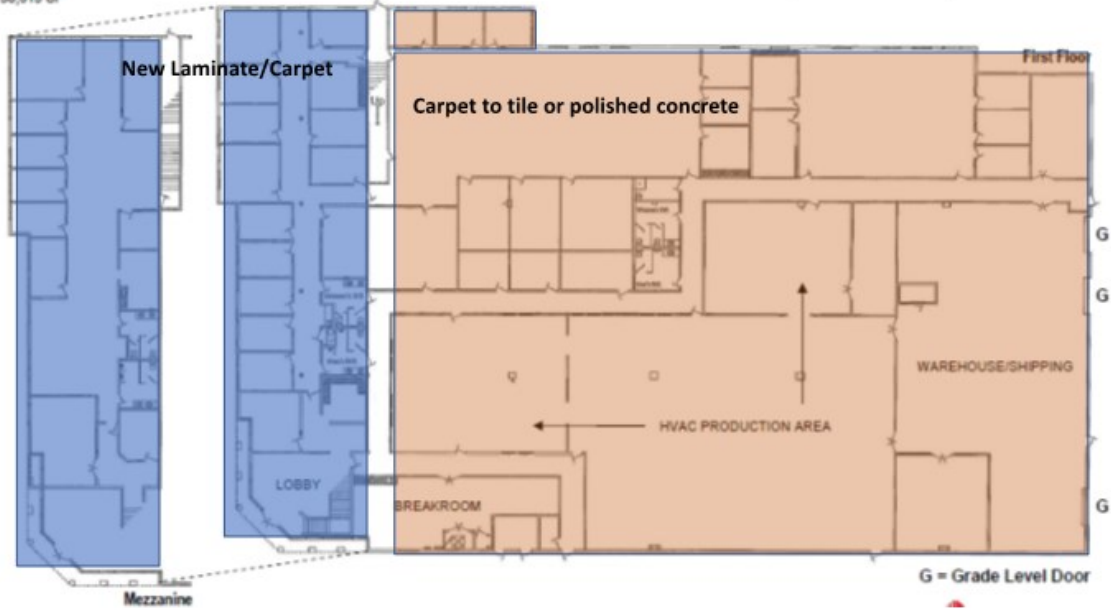
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INITIALS PW

Page 7 DS
PN BH
INITIALS

Exhibits To Lease Exhibit 'A'

Floor plan
38,613 SF

Floor Change + Ceiling Tile



Floor plan
38,613 SF

Security Camera System



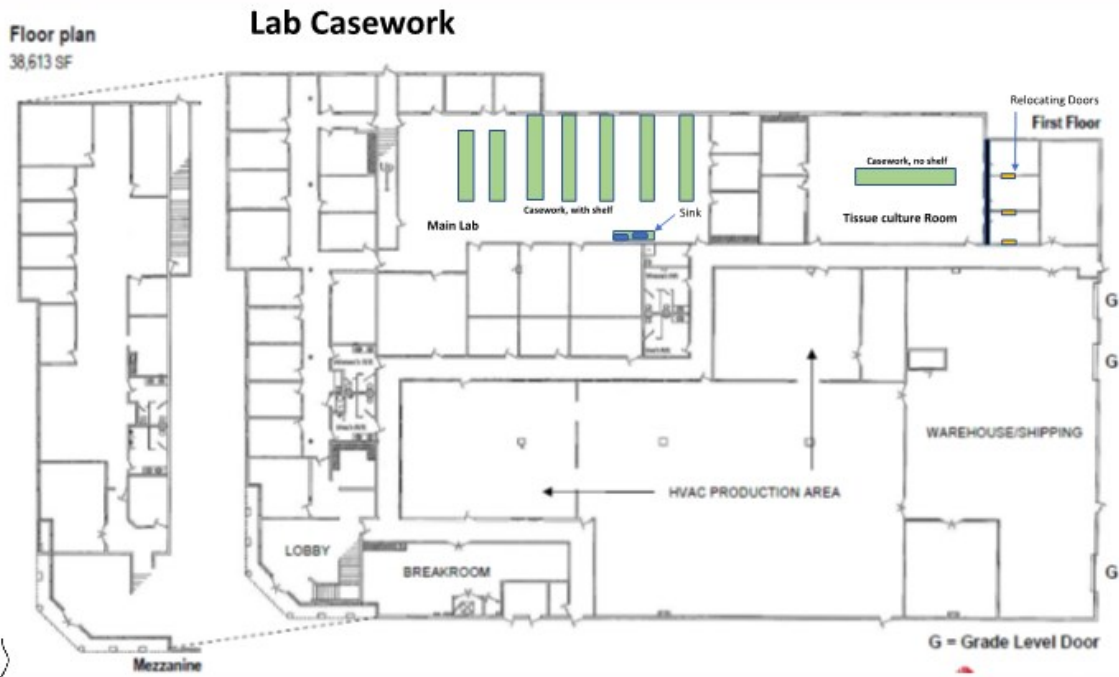
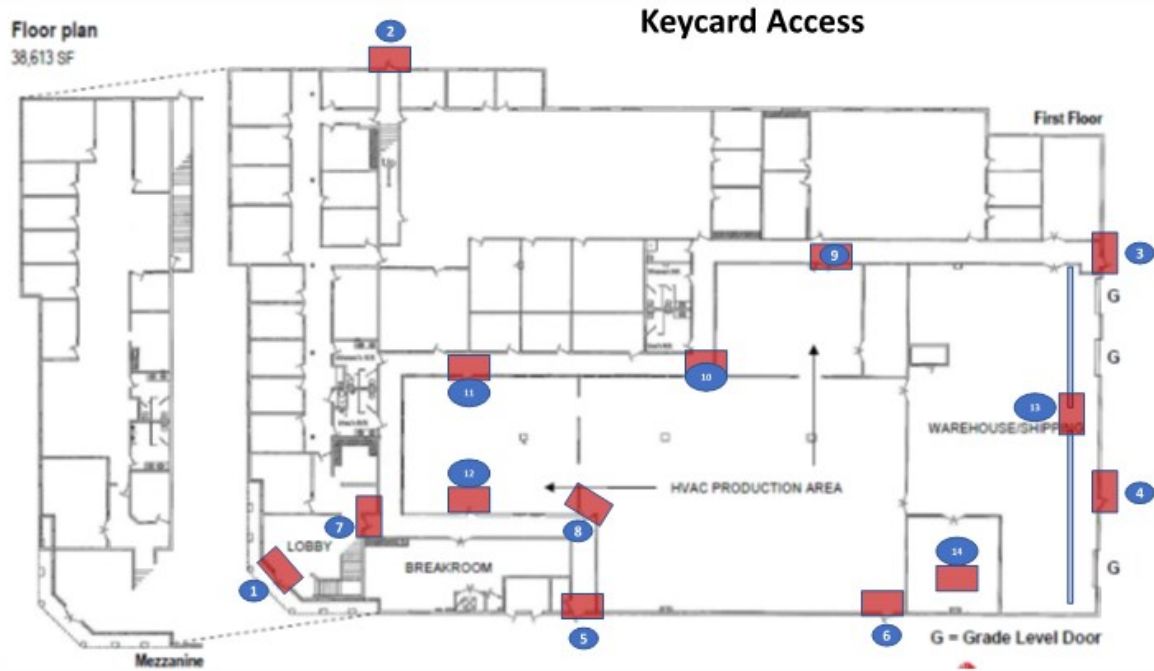
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Exhibits To Lease Exhibit 'A'



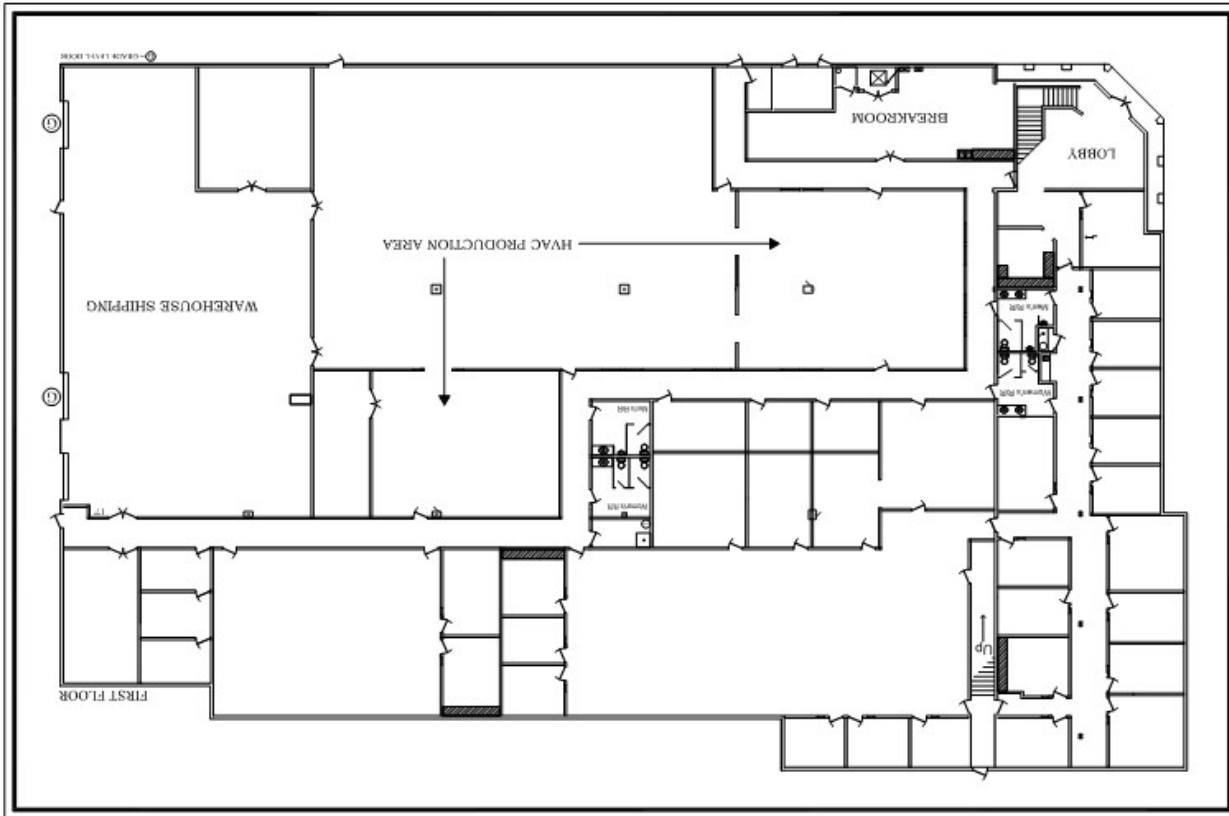
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Exhibits To Lease Exhibit 'A'

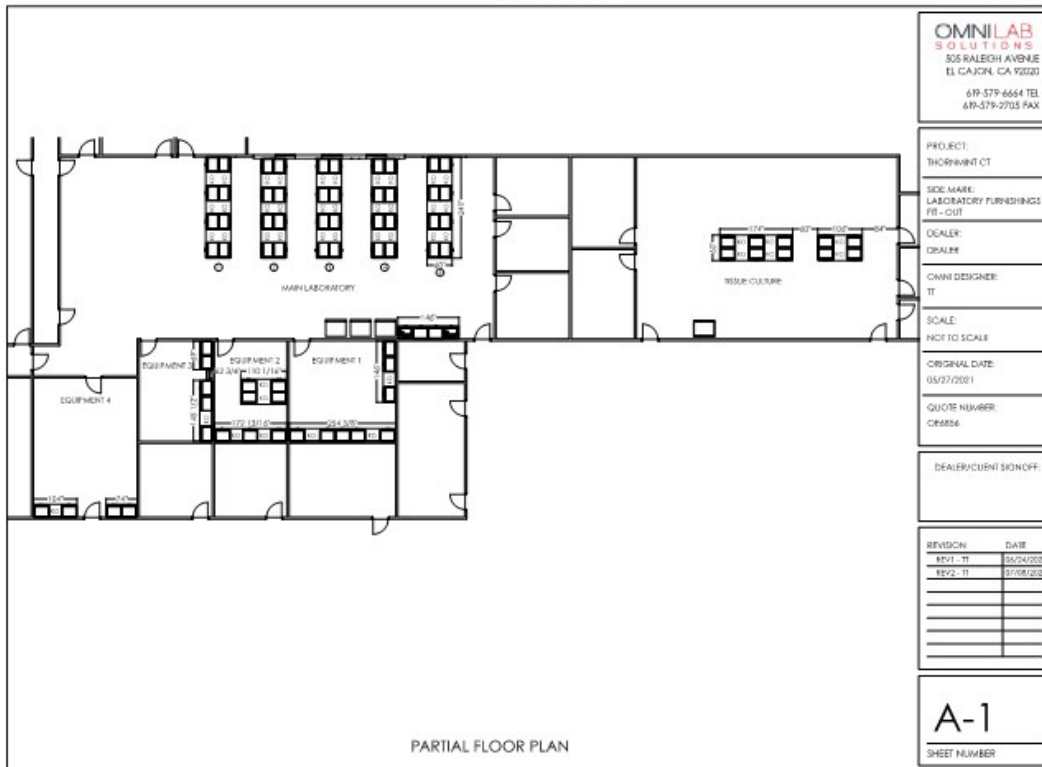


Floor plan
38,613 SF

Preclinical CO2 & N2 Plumbing



Exhibits To Lease Exhibit 'A'



OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92023
619-579-6654 TEL
619-579-2705 FAX

PROJECT: THORNTON CT

SIDE MARE: LABORATORY FURNISHINGS PT - CUT

DEALER: DEALER

OWNER DESIGNER: TI

SCALE: NOT TO SCALE

ORIGINAL DATE: 03/27/2021

QUOTE NUMBER: 06856

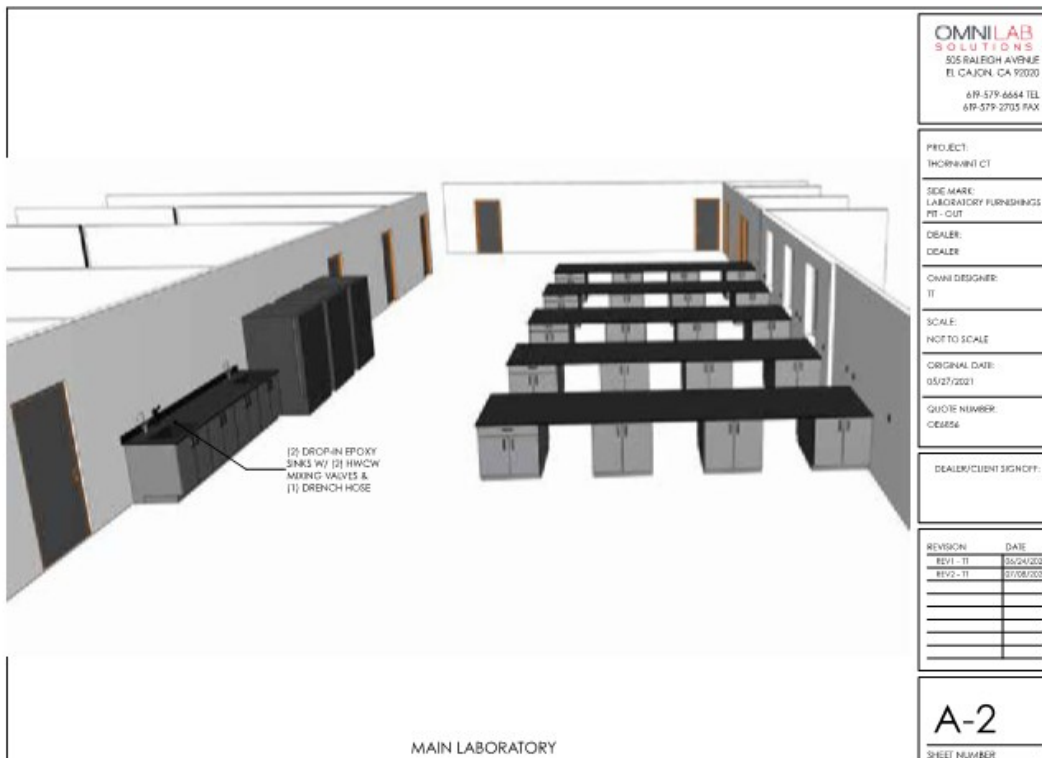
DEALER/CLIENT SIGNOFF:

REVISION	DATE
REV1 - TI	05/24/2021
REV2 - TI	07/08/2021

A-1

SHEET NUMBER

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OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92023
619-579-6654 TEL
619-579-2705 FAX

PROJECT: THORNTON CT

SIDE MARE: LABORATORY FURNISHINGS PT - CUT

DEALER: DEALER

OWNER DESIGNER: TI

SCALE: NOT TO SCALE

ORIGINAL DATE: 03/27/2021

QUOTE NUMBER: 06856

DEALER/CLIENT SIGNOFF:

REVISION	DATE
REV1 - TI	05/24/2021
REV2 - TI	07/08/2021

A-2

SHEET NUMBER

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DS
RW

DS
JW

DS
BH

DS
PN

Exhibits To Lease Exhibit 'A'



OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92020
619-579-6664 TEL
619-579-2705 FAX

PROJECT: THORNTON CT

SIDE MARK: LABORATORY FURNISHINGS PT - CUT

DEALER: DIALER

OWNER DESIGNER: TI

SCALE: NOT TO SCALE

ORIGINAL DATE: 03/27/2021

QUOTE NUMBER: 062656

DEALER/CUSTOMER SIGNOFF:

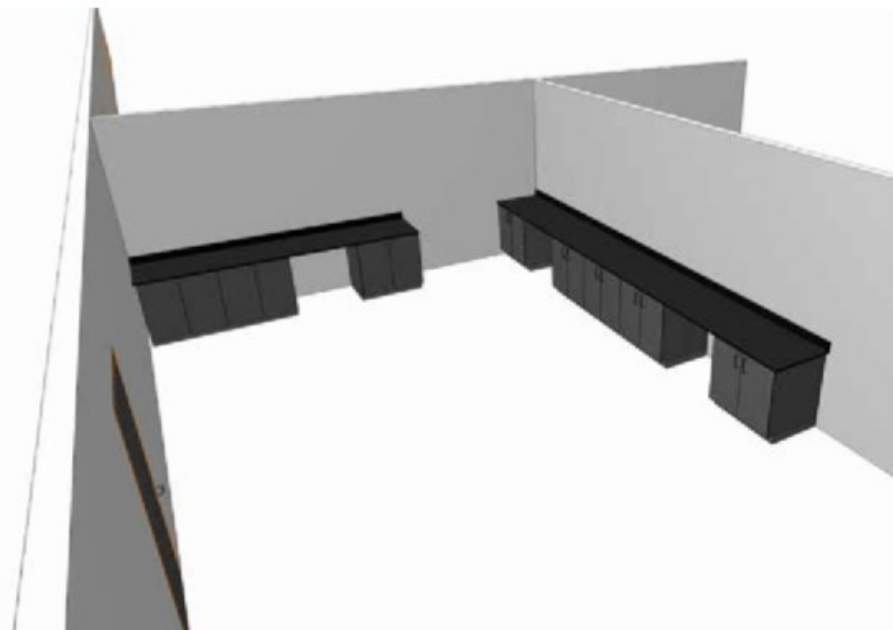
REVISION	DATE
REV1 - TI	05/24/2021
REV2 - TI	07/08/2021

A-3

SHEET NUMBER

TISSUE CULTURE

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OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92020
619-579-6664 TEL
619-579-2705 FAX

PROJECT: THORNTON CT

SIDE MARK: LABORATORY FURNISHINGS PT - CUT

DEALER: DIALER

OWNER DESIGNER: TI

SCALE: NOT TO SCALE

ORIGINAL DATE: 03/27/2021

QUOTE NUMBER: 062656

DEALER/CUSTOMER SIGNOFF:

REVISION	DATE
REV1 - TI	05/24/2021
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A-4

SHEET NUMBER

EQUIPMENT 1

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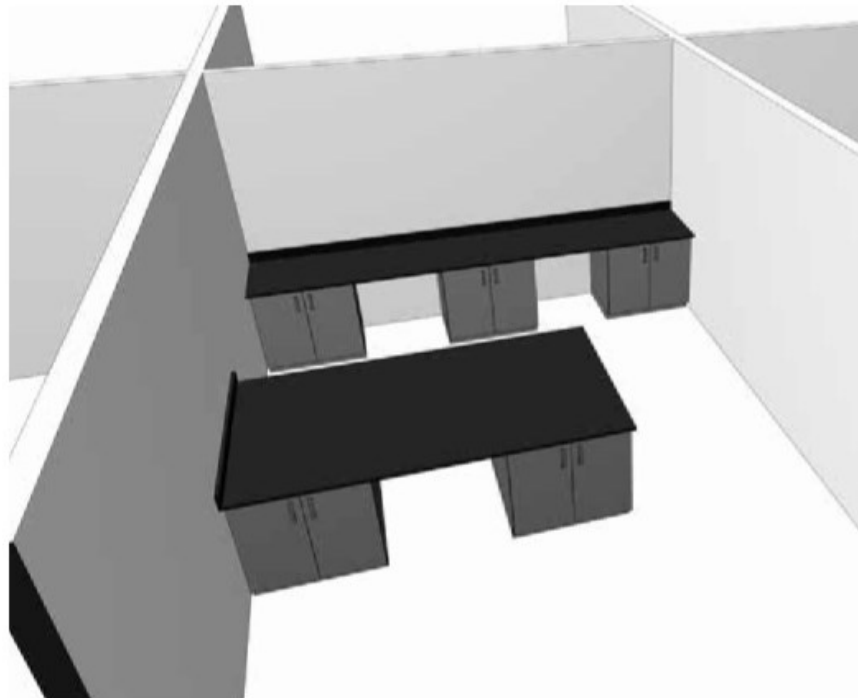
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Exhibits To Lease Exhibit 'A'



OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92023
679-579-6664 TEL
679-579-2705 FAX

PROJECT:
THORNTON CT

SIDE MARK:
LABORATORY FURNISHINGS
PI - CUT

DEALER:
DUALBE

OWNER DESIGNER:
TI

SCALE:
NOT TO SCALE

ORIGINAL DATE:
03/27/2021

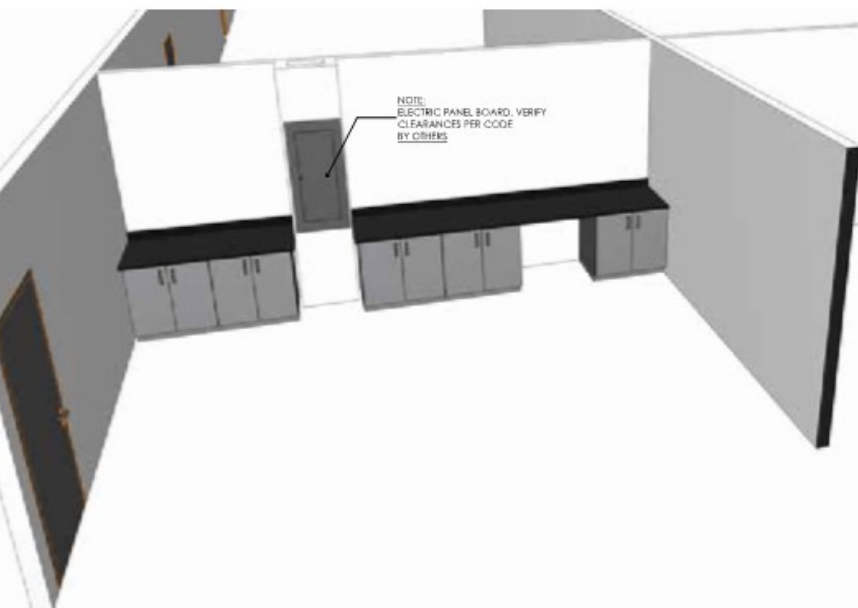
QUOTE NUMBER:
068266

DEALER/CLIENT SIGNOFF:

REVISION	DATE
REV1 - TI	05/24/2021
REV2 - TI	07/08/2021

A-5
SHEET NUMBER

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OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92023
679-579-6664 TEL
679-579-2705 FAX

PROJECT:
THORNTON CT

SIDE MARK:
LABORATORY FURNISHINGS
PI - CUT

DEALER:
DUALBE

OWNER DESIGNER:
TI

SCALE:
NOT TO SCALE

ORIGINAL DATE:
03/27/2021

QUOTE NUMBER:
068266

DEALER/CLIENT SIGNOFF:

REVISION	DATE
REV1 - TI	05/24/2021
REV2 - TI	07/08/2021

A-6
SHEET NUMBER

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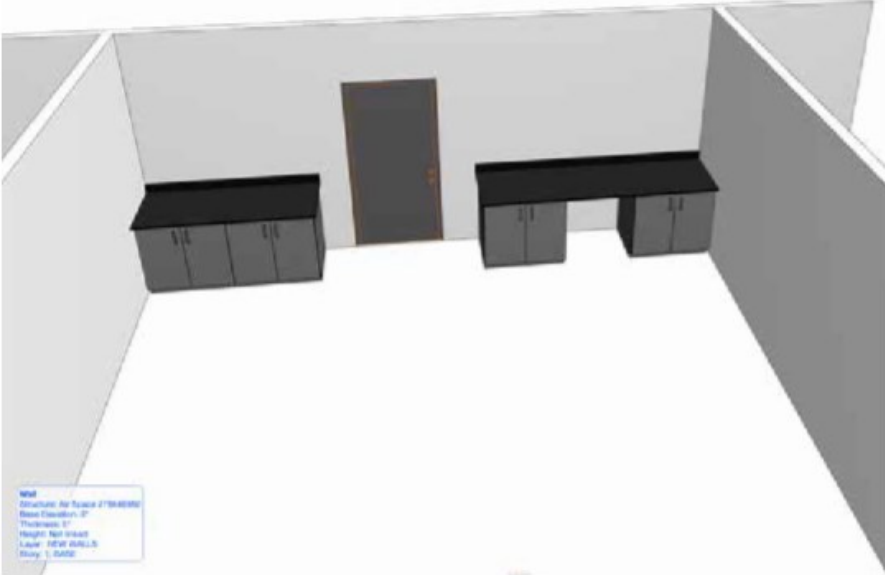
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PN

Exhibits To Lease Exhibit 'A'



Wall
Material: All Panel 27000000
Panel Thickness: 1/2"
Thickness: 1"
Height: 84" MINUS
Liner: NEW WALLS
Rough: 1.0000

EQUIPMENT 4

OMNILAB SOLUTIONS
505 RALEIGH AVENUE
EL CAJON, CA 92023
619-579-6664 TEL
619-579-2705 FAX

PROJECT:
THORNTON CT

SIDE NAME:
LABORATORY FURNISHINGS
PB - CUT

DEALER:
DRAHRE

OWNER DESIGNER:
TT

SCALE:
NOT TO SCALE

ORIGINAL DATE:
03/27/2021

QUOTE NUMBER:
062656

DEALER/CUSTOMER SHOWOFF:

REVISION	DATE
REV1 TT	03/24/2021
REV2 TT	07/09/2021

A-7

SHEET NUMBER

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EXHIBIT "A"

WORK LETTER AGREEMENT

THIS WORK LETTER AGREEMENT ("Work Letter Agreement") is entered into as of the _____ day of July, 2021 by and between Thornmint 13, LLC, a California limited liability company ("Lessor"), and BioArkive, Inc., a California corporation (collectively, "Lessee").

RECITALS

A. Concurrently with the execution of this Work Letter Agreement, Lessor and Lessee have entered into a lease (the "Lease") covering certain premises (the "Premises") more particularly described in the Lease. All terms not defined herein have the same meaning as set forth in the Lease. To the extent applicable, the provisions of the Lease are incorporated herein by this reference.

B. In order to induce Lessee to enter into the Lease and in consideration of the mutual covenants hereinafter contained, Lessor and Lessee agree as follows:

OPERATIVE PROVISIONS

1. **LESSEE IMPROVEMENTS.** As used in the Lease and this Work Letter Agreement, the term "Tenant Improvements", "Lessee Improvements" or "Lessee Improvement Work" or "Lessee's Work" means those items of general Lessee improvement construction shown on the Final Plans (described in Section 4 below). Lessee shall complete the Lessee Improvements on or before August 1, 2022.

2. **WORK SCHEDULE.** Prior to commencing construction, Lessee will deliver to Lessor for Lessor's review and approval, a schedule ("Work Schedule") which will set forth the timetable for the planning and completion of the installation of the Lessee Improvements.

3. **CONSTRUCTION REPRESENTATIVES.** Lessor hereby appoints the following person(s) as Lessor's representative (collectively, "Lessor's Representative") to act for Lessor in all matters covered by this Work Letter Agreement: Charles Baber.

Lessee hereby appoints the following person(s) as Lessee's representative ("Lessee's Representative") to act for Lessee in all matters covered by this Work Letter Agreement: Praveen Nair.

All communications with respect to the matters covered by this Work Letter Agreement are to be made to Lessor's Representative or Lessee's Representative, as the case may be, in writing in compliance with the notice provisions of the Lease. Either party may change its representative under this Work Letter Agreement at any time by written notice to the other party in compliance with the notice provisions of the Lease.

Lease Addendum
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INITIALS

Page 8 *ds*
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INITIALS

4. **LESSEE IMPROVEMENT PLANS**

(a) **Preparation of Space Plans.** In accordance with the Work Schedule, Lessor agrees to meet with Lessee's space planner at a mutually agreeable location in San Diego, California (or other location acceptable to Lessor), for the purpose of promptly reviewing preliminary space plans for the layout of the Premises prepared by Lessee ("Space Plans"). The Space Plans are to be sufficient to convey the architectural design of the Premises and layout of the Lessee Improvements only therein and are to be submitted to Lessor in accordance with the Work Schedule for Lessor's approval. If Lessor reasonably disapproves any aspect of the Space Plans, Lessor will advise Lessee in writing of such disapproval and the reasons therefor in accordance with the Work Schedule. Lessee will then submit to Lessor for Lessor's approval, in accordance with the Work Schedule, a redesign of the Space Plans incorporating the revisions reasonably required by Lessor. Space plans will be sufficient for the cosmetic work and minor modifications to the interior of the Building.

(b) **Preparation of Final Plans.** Based on the approved Space Plans, and in accordance with the Work Schedule, Lessee's architect will prepare complete architectural plans, drawings and specifications and complete engineered mechanical, structural and electrical working drawings only for the back-up generator proposed as a part of the Lessee Improvements for the Premises (collectively, the "Final Plans"). The Final Plans will show (a) the subdivision (including partitions and walls), layout, lighting, finish and decoration work (including window coverings, carpeting and other floor coverings) for the Premises; (b) all internal and external communications and utility facilities which will require conduiting or other improvements from the base Building shell work and/or within common areas; and (c) all other specifications for the Lessee Improvements. The Final Plans will be submitted to Lessor for signature to confirm that they are consistent with the Space Plans. If Lessor reasonably disapproves any aspect of the Final Plans based on any inconsistency with the Space Plans, Lessor agrees to advise Lessee in writing of such disapproval and the reasons therefor within the time frame set forth in the Work Schedule. In accordance with the Work Schedule, Lessee will then cause Lessee's architect to redesign the Final Plans incorporating the revisions reasonably requested by Lessor so as to make the Final Plans consistent with the Space Plans.

(c) **Requirements of Lessee's Final Plans.** Lessee's Final Plans will include locations and complete dimensions, and the back-up generator proposed as a part of the Lessee Improvements, as shown on the Final Plans, and will: (i) be compatible with the Building shell and with the design, construction and equipment of the Building; (ii) if not comprised of the Building standards set forth in the written description thereof (the "Standards"), then compatible with and of at least equal quality as the Standards and approved by Lessor; (iii) comply with all applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction, and all applicable insurance regulations; (iv) not require Building service beyond the level normally provided to other Lessees in the Building and will not overload the Building floors; and (v) be of a nature and quality consistent with the overall objectives of Lessor for the Building, as determined by Lessor in its reasonable but subjective discretion.

(d) **Submittal of Final Plans.** Once approved by Lessor and Lessee, Lessee's architect will submit the Final Plans for the back-up generator proposed as a part of the Lessee

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INITIALS

Page 9 ds
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INITIALS



Improvements to the appropriate governmental agencies for plan checking and the issuance of a building permit. Lessee's architect, with Lessor's cooperation, will make any changes to the Final Plans, which are requested by the applicable governmental authorities to obtain the building permit. After approval of the Final Plans, no further changes may be made without the prior written approval of both Lessor and Lessee, and then only after agreement by Lessee to pay any excess costs resulting from the design and/or construction of such changes.

(e) **Changes to Shell of Building.** If the Final Plans or any amendment thereof or supplement thereto shall require changes in the Building shell, the increased cost of the Building shell work caused by such changes will be paid for by Lessee or charged against the "Allowance" described in Section 5 below.

(f) **Work Cost Estimate and Statement.** Prior to the commencement of construction of any of the Lessee Improvements shown on the Final Plans, Lessee will submit to Lessor a written estimate of the cost to complete the Lessee Improvement Work, which written estimate will be based on the Final Plans taking into account any modifications which may be required to reflect changes in the Final Plans required by the County in which the Premises are located (the "Work Cost Estimate"). Lessor will either approve the Work Cost Estimate or disapprove specific items and submit to Lessee revisions to the Final Plans to reflect deletions of and/or substitutions for such disapproved items. Submission and approval of the Work Cost Estimate will proceed in accordance with the Work Schedule. Upon Lessor's approval of the Work Cost Estimate (such approved Work Cost Estimate to be hereinafter known as the "Work Cost Statement"), Lessee will have the right to purchase materials and to commence the construction of the items included in the Work Cost Statement pursuant to Section 6 hereof. If the total costs reflected in the Work Cost Statement exceed the Allowance described in Section 5 below, Lessee agrees to pay such excess.

5. **PAYMENT FOR THE LESSEE IMPROVEMENTS**

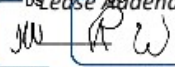
(a) **Allowance.** Lessor hereby grants to Lessee a Lessee improvement allowance of Five Hundred Eighty Thousand and No/100 Dollars (\$580,000.00) (the "Allowance"). The Allowance is to be used only for:

(i) Construction of the Lessee Improvements, including, without limitation, the following:

(aa) Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wall coverings and painting, millwork and similar items;

(bb) All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises (including, without limitation, a backup generator);

(cc) The furnishing and installation of all duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioning systems within the Premises, including the cost of meter and key control for after-hour air conditioning;

Lease Addendum

INITIALS

Page 10 of 10

INITIALS

(dd) Any additional improvements to the Premises required for Lessee's use of the Premises including, but not limited to, window coverings, odor control, special heating, ventilation and air conditioning, noise or vibration control or other special systems or improvements including case work for the laboratories;

(ee) All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

(ff) All plumbing, fixtures, pipes and accessories necessary for the Premises; (gg) Testing and inspection costs; and

(gg) Fees for the contractor and Lessee improvement coordinator including, but not limited to, fees and costs attributable to general conditions associated with the construction of the Lessee Improvements.

(b) **Excess Costs.** The cost of each item referenced in Section 5(a) above shall be charged against the Allowance. If the work cost exceeds the Allowance, Lessee shall be solely responsible for payment of all excess costs, including the Construction Administration Fee, which fee shall be paid to Lessor within five (5) business days after invoice therefor. In no event will the Allowance be used to pay for Lessee's furniture, artifacts, equipment, telephone systems or any other item of personal property, which is not affixed, to the Premises.

(c) **Changes.** Any changes to the Final Plans will be approved by Lessor and Lessee in the manner set forth in Section 4 above. Lessee shall be solely responsible for any additional costs associated with such changes including the Construction Administration Fee, which fee shall be paid to Lessor within five (5) business days after invoice therefor. Lessor will have the right to decline Lessee's request for a change to the Final Plans if such changes are inconsistent with the provisions of Section 4 above.

(d) **Governmental Cost Increases.** If increases in the cost of the Lessee Improvements as set forth in the Work Cost Statement are due to requirements of any governmental agency or the 4-S Business Park Corporation, Lessee shall be solely responsible for such additional costs including the Construction Administration Fee, which fee shall be paid to Lessor within five (5) business days after invoice therefor; provided, however, that Lessor will first apply toward any such increase any remaining balance of the Allowance.

(e) **Unused Allowance Amounts.** Any unused portion of the Allowance upon completion of the Lessee Improvements will not be refunded to Lessee or be available to Lessee as a credit against any obligations of Lessee under the Lease.

(f) **Disbursement of the Allowance.** Provided Lessee is not in default following the giving of notice and passage of any applicable cure period under the Lease or this Work Letter Agreement, Lessor shall disburse the Allowance to Lessee in the form of a two party check payable to the Contractor/vendor and Lessee to pay construction costs which Lessee incurs in connection with the construction of the Lessee Improvements in accordance with the following:

ds Lease Addendum
[Handwritten initials: JW, RW, PW]
INITIALS

Page 11 of 11
[Handwritten initials: PN, BH]
INITIALS

(i) Twenty-five percent (25%) of the Allowance shall be disbursed to Lessee when Lessor shall have received "Evidence of Completion and Invoice" as to fifty percent (50%) of Lessee's Work having been completed and as described hereinbelow;

(ii) Fifty percent (50%) of the Allowance shall be disbursed to Lessee when Lessor shall have received "Evidence of Completion and Invoice" as to seventy-five percent (75%) of Lessee's Work having been completed and as described hereinbelow;

(iii) Fifteen percent (15%) of the Allowance shall be disbursed to Lessee when Lessor shall have received "Evidence of Completion and Invoice" as to ninety percent (90%) of Lessee's Work having been completed and as described hereinbelow;

(iv) The final ten percent (10%) of the Allowance shall be disbursed to Lessee when Lessor shall have received "Evidence of Completion and Invoice" as to one hundred percent (100%) of Lessee's Work having been completed and as described hereinbelow and satisfaction of the items described in subparagraph (vi) below;

(v) As to each phase of completion of Lessee's Work described in subparagraphs (i) through (iv) above, the appropriate portion of the Allowance shall be disbursed to Lessee when Lessor has received the following "Evidence of Completion and Invoice":

(A) Lessee has delivered to Lessor a draw request ("Draw Request") in a form satisfactory to Lessor and Lessor's lender with respect to the Improvements specifying that the requisite portion of Lessee's Work has been completed, together with invoices, receipts and bills evidencing the costs and expenses set forth in such Draw Request and evidence of payment by Lessee for all costs which are payable in connection with such Lessee's Work covered by the Draw Request. The Draw Request shall constitute a representation by Lessee that the Lessee's Work identified therein has been completed in a good and workmanlike manner and in accordance with the Final Plans and the Work Schedule and has been invoiced;

(B) Lessee has delivered to Lessor such other evidence of the absence of any liens generated by such portions of the Lessee's Work as may be required by Lessor (i.e., either unconditional lien releases in accordance with California Civil Code Section 8132 or release bond(s) in accordance with California Civil Code Section 8424);

(C) Lessor or Lessor's architect (or qualified space planner) or construction representative has inspected the Lessee Improvements and determined that the portion of Lessee's Work covered by the Draw Request has been completed in a good and workmanlike manner;

(D) Allowance shall be disbursed within 10 days of receiving the Draw Request and verification of that the work has been completed in a good workmanlike manner.

(vi) The final disbursement of the balance of the Allowance shall be disbursed to Lessee only when Lessor has received Evidence of Completion and Invoice as to all of Lessee's Work as provided hereinabove and the following conditions have been satisfied:

~~Lease Addendum~~
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Page 12 of 12
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(a) Thirty-five (35) days shall have elapsed following the filing of a valid notice of completion by Lessee for the Lessee Improvements;

(b) Lessee has delivered to Lessor: (i) properly executed mechanics lien releases from all of Lessee's contractors, agents and suppliers in compliance with California law, which lien releases shall be conditional with respect to the then-requested payment amounts and unconditional with respect to payment amounts previously disbursed by Lessor; (ii) an application and certificate for payment in compliance with California law signed by Lessee's architect with regards only to the back-up generator proposed as a part of the Lessee Improvements; (iii) original stamped building permit plans with regards only to the back-up generator proposed as a part of the Lessee Improvements; (iv) copy of the building permit for the back-up generator proposed as a part of the Lessee Improvements; (v) original stamped building permit inspection card with all final sign-offs only for the back-up generator proposed to be a part of the Lessee Improvements; (vi) a reproducible copy (in a form approved by Lessor) of the "as-built" drawings for the back-up generator proposed as a part of the Lessee Improvements; (vii) one year warranty letters from Lessee's contractors; (viii) manufacturer's warranties and operating instructions; and (ix) an acceptance of the Premises signed by Lessee;

(c) Lessor has determined that no work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building, the curtain wall of the Building, the structure or exterior appearance of the Building, or any other Lessee's use of such other Lessee's leased premises in the Building;

(d) The satisfaction of any other requirements or conditions which may be required or imposed by Lessor's lender with respect to the construction of the Lessee Improvements; and

(e) Lessee has delivered to Lessor evidence satisfactory to Lessor that all construction costs in excess of the Allowance have been paid for by Lessee.

Notwithstanding anything to the contrary contained hereinabove, all disbursements of the Allowance shall be subject to the prior deduction of the portion of the Construction Administration Fee allocable to the Lessee Improvements described in the applicable Draw Request.

(g) **Books and Records.** At its option, Lessor, at any time within three (3) years after final disbursement of the Allowance to Lessee, and upon at least ten (10) days prior written notice to Lessee, may cause an audit to be made of Lessee's books and records relating to Lessee's expenditures in connection with the construction of the Lessee Improvements. Lessee shall maintain complete and accurate books and records in accordance with generally accepted accounting principles of these expenditures for at least three (3) years. Lessee shall make available to Lessor's auditor at the Premises within ten (10) business days following Lessor's notice requiring the audit, all books and records maintained by Lessee pertaining to the construction and completion of the Lessee Improvements. In addition to all other remedies which Lessor may have pursuant to the Lease, Lessor may recover from Lessee the reasonable cost of

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Page 13 ^{DS}
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its audit if the audit discloses that Lessee falsely reported to Lessor expenditures which were not in fact made or falsely reported a material amount of any expenditure or the aggregate expenditures.

6. **CONSTRUCTION OF LESSEE IMPROVEMENTS.** Following Lessor’s approval of the Final Plans and the Work Cost Statement described in Section 4(f) above, Lessee’s contractor (selected as provided in Paragraph 9(n)) will commence and diligently proceed with the construction of the Lessee Improvements. Lessee shall use diligent efforts to cause its contractor to complete the Lessee Improvements in a good and workmanlike manner in accordance with the Final Plans and the Work Schedule. Lessee agrees to use diligent efforts to cause construction of the Lessee Improvements to commence promptly following the issuance of a building permit for the Lessee Improvements. Lessor shall have the right to enter upon the Premises to inspect Lessee’s construction activities following reasonable advance notice Lessee. No used materials may be used in constructing the Lessee Improvements without Lessor prior written consent.

7. **DELIVERY OF POSSESSION; TERM AND RENT COMMENCEMENT DATE**

(a) **Delivery of Possession.** Lessor agrees to use its commercially reasonable efforts to deliver possession of the Premises to Lessee on or before August 1, 2021 (the “Scheduled Turnover Date”). Lessee agrees that if Lessor is unable to deliver possession of the Premises to Lessee on or prior to the Scheduled Turnover Date specified in the Basic Lease Information section of the Lease, the Lease will not be void or voidable, nor will Lessor be liable to Lessee for any loss or damage resulting therefrom. The actual date upon which Lessor turns over possession of the Premises to Lessee is the “Turnover Date.”

(b) **Term Commencement Date.** The Term of the Lease and Lessee’s obligation to pay rent will commence upon the earlier of substantial completion of the Lessee Improvements (as defined below in Paragraph 8(c)) below or October 1, 2021 (the “Term Commencement Date” and “Rent Commencement Date”).

(c) **Substantial Completion; Punch list.** For purposes of Section 8(b) above, the Lessee Improvements will be deemed to be “substantially completed” when Lessee’s contractor certifies in writing to Lessor and Lessee that Lessee has substantially performed all of the Lessee Improvement Work required to be performed by Lessee under this Work Letter Agreement, other than decoration and minor “punch list” type items and adjustments which do not materially interfere with Lessee’s use of the Premises. Within ten (10) days after receipt of such certificate, Lessee and Lessor will conduct a walk-through inspection of the Premises and Lessor shall provide to Lessee a written punch list specifying those decoration and other punch list items which require completion, which items Lessee will thereafter diligently complete.

Lease Addendum
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Page 14 of 14
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8. **MISCELLANEOUS CONSTRUCTION COVENANTS**

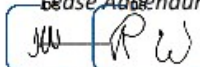
(a) **No Liens.** Lessee shall not allow the Lessee Improvements or the Building or any portion thereof to be subjected to any mechanic's, materialmen's or other liens or encumbrances arising out of the construction of the Lessee Improvements.

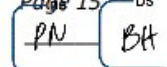
(b) **Diligent Construction.** Lessee will promptly, diligently and continuously pursue construction of the Lessee Improvements to successful completion in full compliance with the Final Plans the Work Schedule and this Work Letter Agreement. Lessor and Lessee shall cooperate with one another during the performance of Lessee's Work to effectuate such work in a timely and compatible manner.

(c) **Compliance with Laws.** Lessee will construct the Lessee Improvements in a safe and lawful manner. Lessee shall, at its sole cost and expense, comply with all applicable laws and all regulations and requirements of, and all licenses and permits issued by, all municipal or other governmental bodies with jurisdiction, which pertain to the installation of the Lessee Improvements. Copies of all filed documents and all permits and licenses shall be provided to Lessor. Any portion of the Lessee Improvements, which is not acceptable to any applicable governmental body, agency or department, or not reasonably satisfactory to Lessor, shall be promptly repaired or replaced by Lessee at Lessee's expense. Notwithstanding any failure by Lessor to object to any such Lessee Improvements, Lessor shall have no responsibility therefor.

(d) **Indemnification.** Subject to the terms of the Lease regarding insurance and waiver of subrogation by the parties, Lessee hereby indemnifies and agrees to defend and hold Lessor, the Premises and the Building harmless from and against any and all suits, claims, actions, losses, costs or expenses of any nature whatsoever, together with reasonable attorneys' fees for counsel of Lessor's choice, arising out of or in connection with the Lessee Improvements or the performance of Lessee's Work (including, but not limited to, claims for breach of warranty, worker's compensation, personal injury or property damage, and any materialmen's and mechanic's liens).

(e) **Insurance.** Construction of the Lessee Improvements shall not proceed without Lessee first acquiring workers' compensation and commercial general liability insurance and property damage insurance as well as "All Risks" builders' risk insurance, with minimum coverage of \$2,000,000 or such other amount as may be approved by Lessor in writing and issued by an insurance company reasonably satisfactory to Lessor. In addition to the foregoing, at Lessor's request, Lessee shall furnish to Lessor a completion and lien indemnity bond or other surety satisfactory to Lessor with respect to the performance of the Lessee Improvements. Not less than thirty (30) days before commencing the construction of the Lessee Improvements, certificates of such insurance shall be furnished to Lessor or, if requested, the original policies thereof shall be submitted for Lessor's approval. All such policies shall provide that thirty (30) days prior notice must be given to Lessor before modification, termination or cancellation. All insurance policies maintained by Lessee pursuant to this Work Letter Agreement shall name Lessor and any lender with an interest in the Premises as additional insureds and comply with all of the applicable terms and provisions of the Lease relating to insurance. Lessee's contractor

Lease Addendum

INITIALS

Page 15 ^{DS}

INITIALS

shall be required to maintain the same insurance policies as Lessee, and such policies shall name Lessee, Lessor and any lender with an interest in the Premises as additional insureds.

(f) **Construction Defects.** Lessor shall have no responsibility for the Lessee Improvements and Lessee will remedy, at Lessee's own expense, and be responsible for any and all defects in the Lessee Improvements that may appear during or after the completion thereof whether the same shall affect the Lessee Improvements in particular or any parts of the Premises in general. Lessee shall indemnify, hold harmless and reimburse Lessor for any costs or expenses incurred by Lessor by reason of any defect in any portion of the Lessee Improvements constructed by Lessee or Lessee's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Lessee Improvements.

(g) **Additional Services.** If the construction of the Lessee Improvements shall require that additional services or facilities (including, but not limited to, hoisting, cleanup or other cleaning services, trash removal, field supervision, or ordering of materials) be provided by Lessor, then Lessee shall pay Lessor for such items at Lessor's cost or at a reasonable charge if the item involves time of Lessor's personnel only. Electrical power and heating, ventilation and air conditioning shall be available to Lessee during normal business hours for construction purposes at no charge to Lessee.

(h) **Coordination of Labor.** All of Lessee's contractors, subcontractors, employees, servants and agents must work in harmony with and shall not interfere with any labor employed by Lessor, or Lessor's contractors. Nothing in this Work Letter shall, however, require Lessee to use union labor.

(i) **Work in Adjacent Areas.** Any work to be performed in areas adjacent to the Premises shall be performed only after obtaining Lessor's express written permission, which shall not be unreasonably withheld, conditioned or delayed, and shall be done only if an agent or employee of Lessor is present; Lessee will reimburse Lessor for the expense of any such employee or agent.

(j) **HVAC Systems.** Lessee agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Lessee (and all HVAC and other outlets, new or existing, must be sealed by Tenant for dry method polishing) and/or maintenance of the electrical or plumbing work installed by Lessee and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Lessee.

(k) **Coordination with Lease.** Nothing herein contained shall be construed as (i) constituting Lessee as Lessor's agent for any purpose whatsoever, or (ii) a waiver by Lessor or Lessee of any of the terms or provisions of the Lease. Any default by Lessee following the giving of notice and the passage of any applicable cure period with respect to any portion of this Work Letter Agreement shall be deemed a breach of the Lease for which Lessor shall have all the rights and remedies as in the case of a breach of said Lease.

Lease Addendum
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Page 16
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(l) **Approval of Plans.** Lessor will not check Lessee drawings for building code compliance. Approval of the Final Plans by Lessor is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Lessee's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Lessor or its architect (or qualified space planner) for their accuracy, sufficiency or efficiency, and Lessee shall be solely responsible for such matters.

(m) **Lessee's Deliveries.** Lessee shall deliver to Lessor, at least five (5) days prior to the commencement of construction of Lessee's Work, the following information:

(i) The names, addresses, telephone numbers, and primary contacts for the general, mechanical and electrical contractors Lessee intends to engage in the performance of Lessee's Work; and

(ii) The date on which Lessee's Work will commence, together with the estimated dates of completion of Lessee's construction and fixturing work.

(n) **Qualification of Contractors.** Once the Final Plans have been proposed and approved, Lessee shall select and retain a contractor and subcontractors of Lessee's choice approved by Lessor for the construction of the Lessee Improvement Work in accordance with the Final Plans. All contractors engaged by Lessee shall be bondable, licensed contractors (without suspension or restrictions whatsoever), possessing good labor relations, capable of performing quality workmanship.

(o) **Warranties.** Lessee shall cause its contractor to provide warranties for not less than one (1) year (or such shorter time as may be customary and available without additional expense to Lessee) against defects in workmanship, materials and equipment, which warranties shall run to the benefit of Lessor or shall be assignable to Lessor to the extent that Lessor is obligated to maintain any of the improvements covered by such warranties.

(p) **Lessor's Performance of Work.** Within ten (10) working days after receipt of Lessor's notice of Lessee's failure to perform its obligations under this Work Letter Agreement, if Lessee shall fail to commence to cure such failure, Lessor shall have the right, but not the obligation, to perform, on behalf of and for the account of Lessee, subject to reimbursement of the cost thereof by Lessee, any and all of Lessee's Work which Lessor determines, in its reasonable discretion, should be performed immediately and on an emergency basis for the best interest of the Premises including, without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removal of unduly accumulated construction material and debris; provided, however, Lessor shall use reasonable efforts to give Lessee at least ten (10) days prior notice to the performance of any of Lessee's Work.

(q) **As-Built Drawings.** Lessee shall cause "As-Built Drawings" (excluding furniture, fixtures and equipment) only for the back-up generator proposed as a part of the Lessee Improvements to be delivered to Lessor and/or Lessor's representative no later than sixty (60)

Lessee Addendum
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Page 17 DS
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days after Lessor's written approval of Lessee's Work. In the event these drawings are not received by such date, Lessor may, at its election, cause said drawings to be obtained and Lessee shall pay to Lessor, as additional rent, the cost of producing these drawings.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee have caused this Work Letter Agreement to be duly executed by their duly authorized representatives as of the date of the Lease.

"LESSOR"

THORN MINT 13, LLC, a California limited liability company

By: DocuSigned by: John Weersing
787051092EF4484
John Weersing, Member

Date: 7/24/2021 | 8:13 PDT

By: DocuSigned by: Rebecca Weersing
886002618800444
Rebecca Weersing, Member

Date: 7/25/2021 | 1:16 PDT

"LESSEE"

BIOARKIVE, INC., a California corporation

By: DocuSigned by: Brett Hall
A88483890C08455
Brett Hall, CFO

Date: 7/23/2021 | 1:02 PDT

By: DocuSigned by: Praveen Nair
B117A40681E264F3
Praveen Nair, CEO

Date: 7/23/2021 | 2:54 PDT

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Page 18
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DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. **This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).**

Buyer Seller Lessor Lessee Thornmint 13, LLC, , a California limited liability company Date: 7/24/2021 | 8:13 PDT

Buyer Seller Lessor Lessee _____ Date: _____

Agent: Colliers International CA, Inc., Colliers International DRE Lic. #: 01908588
Real Estate Broker (Firm)

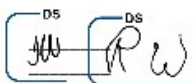
By: David Harper DRE Lic. #: 00880644 Date: _____

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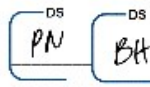
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(Salesperson or Broker-Associate)

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Page 2 of 4

**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

2079.13. As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. **(b)** "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. **(c)** "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobile home, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. **(d)** "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. **(e)** "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. **(f)** "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. **(g)** "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. **(h)** "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. **(i)** "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. **(j)** "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multi-unit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobile home as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. **(k)** "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. **(l)** "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. **(m)** "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. **(n)** "Buyer's agent" means an agent who represents a buyer in a real property transaction.

2079.14. A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: **(a)** The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. **(b)** The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17(a) As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. **(b)** As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(c) CONFIRMATION: The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): the seller; or both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): the Seller's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is the broker of (check one): the buyer; or both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number _____

Is (check one): the Buyer's Agent. (salesperson or broker associate); or both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

2079.18 (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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Page 3 of 4

prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.


2079.21 (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. **(b)** A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. **(c)** "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. **(d)** This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

2079.23 (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. **(b)** A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

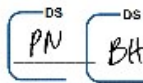
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Last Edited: 7/22/2021 12:33 PM

Page 4 of 4