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): October 11, 2023

OptimizeRx Corporation

(Exact name of registrant as specified in charter)

Nevada	**001-38543**	**26-1265381**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

260 Charles Street, Suite 302, Waltham, MA	**02453**
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: **248.651.6568**

Not Applicable
(Former name or former address, if changed since last report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock, $0.001 Par Value	OPRX	The Nasdaq Capital Market

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Agreement and Plan of Merger

On October 11, 2023, OptimizeRx Corporation (the "Company" or "OptimizeRx") entered into a definitive Agreement and Plan of Merger (the "Merger Agreement") with Healthy Offers, Inc. (d/b/a Medicx Health), a Nevada corporation ("Medicx"), the securityholders of Medicx named therein (the "Securityholders"), and Michael Weintraub, not in his individual capacity, but solely in his capacity as representative, agent and attorney-in-fact of the Securityholders.

Upon the terms and subject to the conditions of the Merger Agreement, (i) the Company will form a new Nevada corporation that will be wholly-owned by the Company ("Merger Sub") and (ii) Merger Sub will merge with and into Medicx with Medicx as the surviving corporation and a wholly-owned subsidiary of the Company (the "Merger").

The aggregate merger consideration (the "Merger Consideration") the Company will pay to the Securityholders of Medicx at the closing is $95,000,000, subject to certain customary post-acquisition purchase price adjustments.

All vested options to purchase common stock of the Medicx will be cancelled and, in settlement of such cancellation, each holder of an option will receive a cash payment equal to the (i) excess of the per-share merger consideration over the applicable exercise price of such option (ii) multiplied by the number of shares of Medicx common stock subject to such option. Outstanding unvested options to purchase common stock of the Medicx will be cancelled and terminated without consideration.

OptimizeRx and Medicx have agreed to customary representations, warranties and covenants in the Merger Agreement, including, among others, pre-closing covenants by Medicx to carry on its business in the ordinary course consistent with past practice and not to engage in certain types of transactions without the consent of OptimizeRx.

The Merger Agreement contains certain termination rights for both the Company and Medicx. The completion of the Merger is subject to customary closing conditions, including, among others: (i) the absence of certain legal impediments to the consummation of the Merger, (ii) the accuracy of the representations and warranties made by the Company and the Medicx, respectively, and (iii) compliance by the Company and the Medicx with their respective obligations under the Merger Agreement.

Support Agreement

Simultaneous with the execution of the Merger Agreement, certain stockholders of Medicx executed a Joinder and Support Agreement (the "Support Agreement") by and among such stockholders, the Company, and Medicx. Pursuant to the Support Agreement, the stockholders agreed to join and become a party to the Merger Agreement and to be bound by and comply with the terms and provisions of the Merger Agreement applicable to a Securityholder in the same manner as if such stockholder were an original signatory to the Merger Agreement. The stockholders consented to and affirmed (i) all of the representations and warranties of a Securityholder under the Merger Agreement, (ii) all of the covenants, indemnities, and agreements set forth in the Merger Agreement applicable to a Securityholder and (iii) that the stockholder will perform all obligations of a Securityholder set forth in the Merger Agreement.

Subscription Agreement

Certain members of Medicx's management team ("Management Investors") agreed to use a portion of the consideration received pursuant to the Merger Agreement to purchase, in the aggregate, approximately $10.5 million of the Company's common stock. Each Management Investor will receive the number of shares of the Company's common stock equal to: (i) the aggregate amount to be invested by such Management Investor, divided by (ii) the volume-weighted average of the trading prices on the Nasdaq Capital Market for one share of the Company's common stock for the five consecutive trading days ending the trading day immediately preceding the date that the Merger Agreement was executed, which shares of common stock shall be rounded up to the nearest whole number of shares of common stock (on an aggregate basis per Management Investor), in lieu of receiving any amount of cash or fractional shares of common stock. In connection with such management investment, at the closing of the Merger, each Management Investor will execute a subscription agreement to memorialize his or her purchase.

Financing Agreement

On October 11, 2023 (the "Loan Date"), the Company, as the lead borrower, entered into a Financing Agreement (the "Financing Agreement") with the lenders from time to time party thereto (the "Lenders") and Blue Torch Finance, LLC, a Delaware limited liability company ("Blue Torch"), as collateral agent and administrative agent for the Lenders. Merger Sub and Medicx will become borrowers under the Financing Agreement by executing a joinder (each a "Borrower" and, together with the Company, the "Borrowers"). The Financing Agreement provides for a term loan (the "Term Loan") to the Borrowers in the aggregate principal amount of $40,000,000, the proceeds of which will be used to fund, in part, the Merger Consideration.

The Term Loan shall bear interest, at the Company's option, at either (a) the Reference Rate, which means the greatest of (i) 4% per annum, (ii) the Federal Funds Rate (as defined in the Financing Agreement) plus 0.5% per annum, (iii) the Adjusted Term SOFR (as defined in subsection (b) below) plus 1% per annum, or (iv) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Blue Torch) or any similar release by the Federal Reserve Board (as determined by Blue Torch), plus 7.5% per annum or (b) the Adjusted Term SOFR, which means a rate per annum equal to the secured overnight financing rate for such business day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time), plus 0.26161% (26.161 basis points), plus 8.5% per annum.

The outstanding principal amount of the Term Loan is repayable in quarterly installments on the last business day of each fiscal quarter commencing on December 31, 2023 in an amount equal to 1.25% of the principal amount of the Term Loan issued on the Loan Date (or in the case of the first repayment date, a pro rata portion of such amount for the period commencing with the Loan Date and ending on December 31, 2023). The outstanding unpaid principal amount of the Term Loan, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (i) the fourth (4^{th}) anniversary of the closing of the Financing Agreement and funding of the Term Loan and (ii) the date on which the Term Loan is declared due and payable pursuant to the terms of the Finance Agreement.

The Financing Agreement contains customary affirmative and negative covenants that are binding on the Borrowers (which are in some cases subject to certain exceptions), including, but not limited to, on the ability of the Loan Parties to incur additional indebtedness, create liens on their respective assets, make any change in the nature of their business, make certain loans and investments, guaranty obligations, make certain dividends and related distributions, enter into, or undertake, certain liquidations, mergers, consolidations or acquisitions and dispose of assets or subsidiaries, and the requirement to make certain financial reports to the Lenders.

In addition, the Financing Agreement provides that the Borrowers shall not, unless the Lenders otherwise consent in writing: (a) allow the Leverage Ratio (as defined in the Financing Agreement) of the Borrowers and their subsidiaries for any Test Period below to be greater than the ratio set forth opposite such date:

Fiscal Month End	Leverage Ratio
March 31, 2024	4.50:1.00
June 30, 2024	4.00:1.00
September 30, 2024	3.50:1.00
December 31, 2024	3.00:1.00
March 31, 2025	2.50:1.00
June 30, 2025	2.25:1.00
September 30, 2025 and thereafter	2.00:1.00

and (b) allow Liquidity (as defined in the Financing Agreement) of the Borrowers to be less than $5,000,000 at any time.

The Financing Agreement contains customary events of default (which are in some cases subject to certain exceptions, thresholds, notice requirements and grace periods), including, but not limited to, nonpayment of principal or interest, breaches of representations and warranties, failure to perform or observe covenants, cross-defaults with certain other agreements or indebtedness, final judgments or orders, certain uninsured losses or proceedings against assets, certain change of control events and certain bankruptcy-related events or other relief proceedings.

In addition, the Company and Blue Torch entered into a letter agreement (the "Letter Agreement"), pursuant to which the Borrowers paid to Blue Torch, as the administrative agent, for the account of each Lender, a non-refundable upfront amount equal to $1,400,000 (i.e., 3.5% of the aggregate principal amount of the Term Loan commitments held by the Lenders as of October 11, 2023). Under the Letter Agreement, in the event the loans are not funded within ten business days from October 11, 2023, subject to certain limited exceptions, the Borrowers agreed to pay Blue Torch, as the administrative agent, a nonrefundable breakup fee in the amount of $3,000,000.

The foregoing description of the Merger Agreement, the Support Agreement, the Financing Agreement and the Letter Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of each agreement, copies of which are filed as Exhibits 10.1, 10.2, 10.3 and 10.4 hereto and are incorporated by reference herein.

Item 2.02 Results of Operation and Financial Condition.

On October 12, 2023, OptimizeRx issued a press release pre-announcing certain unaudited financial results for the quarter ended September 30, 2023, including, but not limited to, expected revenue between $15.2 million and $15.5 million. A copy of the press release is furnished with this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

The information in this Item 2.02 and Exhibit 99.1 attached hereto are furnished and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, except as expressly set forth by specific reference in such filing.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth above under the heading "Subscription Agreement" in Item 1.01 of this Current Report is incorporated by reference into this Item 3.02. The shares of OptimizeRx common stock to be issued to the Management Investors will not be registered under the Securities Act in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

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

On October 12, 2023, the Company announced that Stephen L. Silvestro will be appointed President of the Company effective as of the closing of the Merger. In connection with assuming his new position, Mr. Silvestro will step down as Chief Commercial Officer effective as of the closing of the Merger.

Mr. Silvestro, 45, joined the Company as Chief Commercial Officer on April 29, 2019. Mr. Silvestro was with CCH® Tagetik, a Wolters Kluwer company that provides corporate performance management software solutions for planning, consolidation and reporting, as its Vice President and General Manager from January 2018 until April 2019. From April 2017 to January 2018, Mr. Silvestro was with Prognos Health, Inc., a healthcare data and analytics company, as its Chief Commercial Officer and, before that, from September 2007 to April 2017, he was with Decision Resources Group, a multi-national corporation that provides high value global data solutions, analytics and consulting services to pharmaceutical, biotech, medical device, healthcare provider and payer, and managed care companies, in various capacities with him last serving as Executive Vice President, Head of Global Sales.

Item 7.01 Regulation FD Disclosure.

On October 12, 2023, the Company issued a press release announcing the execution of the Merger Agreement. A copy of the press release is furnished with this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

The information in this Item 7.01 and Exhibit 99.1 attached hereto are furnished and shall not be deemed "filed" for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except as expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

Exhibit Number	Description
10.1*	Agreement and Plan of Merger dated as of October 11, 2023 by and among OptimizeRx Corporation, Healthy Offers, Inc., the securityholders of Healthy Offers, Inc. who are party to the Agreement, and Michael Weintraub, not in his individual capacity, but solely in his capacity as the representative, agent and attorney-in-fact of the Securityholders.
10.2	Support Agreement, dated as of October 11, 2023 by and among the stockholders party thereto, OptimizeRx Corporation and Healthy Offers, Inc.
10.3*	Financing Agreement, dated as of October 11, 2023, by and among OptimizeRx Corporation, the lenders from time to time party thereto, and Blue Torch Finance, LLC, as collateral agent and administrative agent.
10.4	Letter Agreement, dated as of October 11, 2023, OptimizeRx Corporation and Blue Torch Finance, LLC.
99.1	Press Release of OptimizeRx dated October 12, 2023.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

***** Exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted exhibit to the SEC upon request.

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.

OPTIMIZERX CORPORATION

Date: October 16, 2023

By: /s/ Edward Stelmakh
Name: Edward Stelmakh
Title: Chief Financial Officer

Exhibit 10.1

AGREEMENT AND PLAN OF MERGER

by and among

OPTIMIZERX CORPORATION,

HEALTHY OFFERS, INC.,

THE SECURITYHOLDERS OF HEALTHY OFFERS, INC.,

and

MICHAEL WEINTRAUB, as Securityholder Representative

Dated as of October 11, 2023

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

TABLE OF CONTENTS
(continued)

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of October 11, 2023 (the "Agreement Date"), is entered into by and among OptimizeRx Corporation, a Nevada corporation ("Buyer"), Healthy Offers, Inc., a Nevada corporation d/b/a Medicx Health (the "Company"), the Securityholders of the Company who now or hereafter become a party to this Agreement, and Michael Weintraub, not it his individual capacity, but solely in his capacity as the representative, agent and attorney-in-fact of the Securityholders (the "Representative"). The Buyer and the Company are referred to collectively herein as the "Parties" and each as a "Party."

BACKGROUND

WHEREAS, after the Agreement Date, the Buyer will form a new Nevada corporation that will be wholly owned by the Buyer (such corporation, "Merger Sub");

WHEREAS, the Parties desire to merge Merger Sub with and into the Company with the Company as the surviving corporation (the "Merger");

WHEREAS, the board of directors of the Company has unanimously (a) determined that this Agreement and the Transactions, including the Merger, are in the best interests of the Company and its Securityholders, (b) approved and declared advisable this Agreement and the Transactions, including the Merger, and (c) recommended adoption of this Agreement by the Securityholders of the Company in accordance with the Nevada Revised Statutes Chapter 92A (the "(the "Nevada Act");

WHEREAS, prior to the execution and delivery of this Agreement and as a material inducement to Buyer to enter into this Agreement, the Company obtained from the Major Holders (who collectively hold, in the aggregate, not less than 88.6% of the outstanding Shares entitled to vote on this Agreement) the written consent attached hereto as Exhibit A-1 (the "Shareholder Consent");

WHEREAS, prior to the execution and delivery of this Agreement and as a material inducement to Buyer to enter into this Agreement, the Company obtained from the Major Holders (who collectively hold, in the aggregate, not less than 88.6% of the outstanding Shares entitled to vote on this Agreement) a joinder and waiver, in the form attached hereto as Exhibit A-2 (the "Joinder and Support Agreement"); and

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and intending to be legally bound hereby, the Parties agree as follows:

1. The Merger.

1.1. Merger. Subject to and upon the terms and conditions of this Agreement and in accordance with the Nevada Act, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation. Upon consummation of the Merger, the separate corporate existence of Merger Sub shall cease and the Company, as the surviving corporation of the Merger, shall continue its corporate existence as a wholly owned subsidiary of the Buyer. The Company, as the surviving company in the Merger, is hereinafter sometimes referred to as the "Surviving Corporation."

1.2. The Effective Time. At the Closing, subject to the terms and conditions set forth in this Agreement, the Company, Buyer, and Merger Sub shall cause articles of merger, in form and substance substantially similar to Exhibit 1.2 attached hereto (the "Articles of Merger") to be executed, acknowledged, and filed with the Secretary of State of the State of Nevada, and shall make all other filings or recordings required by the Nevada Act to complete the Merger. The Merger shall become effective at such time as the Articles of Merger is duly filed with the Secretary of State of the State of Nevada or at such other time as Buyer and the Company shall agree and shall specify in the Articles of Merger (the "Effective Time").

1.3. Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the Nevada Act. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all of the assets, property, rights, privileges, powers, and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, and duties of the Company and Merger Sub shall become the debts, liabilities, and duties of the Surviving Corporation.

1.4. Articles of Incorporation. The articles of incorporation of Merger Sub in effect at the Effective Time shall be the articles of incorporation of the Surviving Corporation until amended in accordance with applicable Law; *provided, however*, that the name of the corporation set forth therein shall be changed to the name of the Company.

1.5. Bylaws. The Bylaws of Merger Sub in effect at the Effective Time shall be the Bylaws of the Surviving Corporation until amended in accordance with applicable Law; *provided, however*, that the name of the corporation set forth therein shall be changed to the name of the Company.

1.6. Directors and Officers. From and after the Effective Time, until successors are duly elected or appointed in accordance with applicable Law, the directors and officers of Merger Sub at the Effective Time shall be the directors of the Surviving Corporation, and the officers of the Merger Sub at the Effective Time shall be the officers of the Surviving Corporation.

1.7. Conversion of Shares and Vested Options. On the terms and subject to the conditions of this Agreement, at the Effective Time by virtue of the Merger and without any action on the part of the Parties or any of the Securityholders, the following shall occur:

1.7.1 Company Stock. Each Share issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares or shares of treasury stock to be cancelled pursuant to Section 1.7.3) shall automatically be cancelled and extinguished and converted into the right to receive, subject to the terms and conditions of this Agreement, a portion of the Merger Consideration *plus* the portion of the Deemed Cash Amount attributable to such Share, as set forth in the Payment Schedule, subject to and payable in accordance with Section 1.8, the Company's First Amended and Restated Articles of Incorporation ("Articles of Incorporation") in effect immediately prior to the Closing, and the other provisions of this Agreement, and from the Adjustment Escrow Funds as provided in this Agreement and the Escrow Agreement and on account of the Purchase Price Adjustment, at the respective times and subject to the contingencies specified herein and therein, without any interest thereon. At the Effective Time, each Share will no longer be outstanding and will be automatically cancelled and retired and will cease to exist, and each holder of a Certificate will cease to have any rights with respect thereto, except the right to receive, upon surrender of such Certificate, such consideration provided for herein.

1.7.2 Options.

(a) Vested Company Options. At the Effective Time, each Vested Company Option shall be cancelled and automatically converted into the right to receive, following the execution and delivery of an Option Cancellation Agreement with respect to any such Vested Company Option, at the respective times and subject to the requirements and contingencies specified herein, without interest, the amount in cash equal to the product of (i) the excess of (A) the Merger Consideration per share of Common Stock over (B) the exercise price per share of Common Stock subject to such Vested Company Option, *multiplied by* (ii) the number of shares of Common Stock subject to such Vested Company Option; *plus* (y) the portion of the Deemed Cash Amount attributable to such Vested Company Option, as set forth in the Payment Schedule, if any.

(b) Unvested Company Options. At the Effective Time, each Company Option outstanding as of immediately prior to the Effective Time (other than any Vested Company Option) shall be cancelled and terminated without consideration. None of Buyer, Merger Sub or the Surviving Corporation shall assume or otherwise replace any Company Option (or portion thereof) in connection with the Transactions.

1.7.3 Cancellation of Treasury Stock. Each share of Company Stock held immediately prior to the Effective Time by the Company as treasury stock shall be automatically cancelled and extinguished and no cash or other consideration shall be paid with respect thereto.

1.7.4 Merger Sub Common Stock. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. The shares of common stock of the Surviving Corporation shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

1.8. Securityholder Payments; Security Deliveries.

1.8.1 Acquiom Financial LLC, a Colorado limited liability company (the "Paying Agent") shall act as paying agent in effecting payments to the Securityholders and the exchange of cash for (a) in the instance of Shareholders, the certificates which, immediately prior to the Effective Time, represented shares of Common Stock or Preferred Stock, as the case may be ("Certificates"), owned by such Shareholders, and (b) in the instance of Optionholders, the Company Options owned by such Optionholder and a duly executed agreement cancelling such Optionholder's Company Options (an "Option Cancellation Agreement"), in form and substance substantially similar to Exhibit 1.8.1-1 attached hereto. Within five (5) Business Days following the date hereof, to the extent not delivered prior to the date hereof, the Company shall deliver to each Securityholder a letter of transmittal in form and substance substantially similar to Exhibit 1.8.1-2 attached hereto (the "Letter of Transmittal"). The Letter of Transmittal shall approve the execution and performance of this Agreement and the Escrow Agreement.

1.8.2 The Letter of Transmittal shall direct each Securityholder to deliver to the Paying Agent, as applicable: (a) (i) in the instance of a Shareholder, all Certificates, duly endorsed in blank or accompanied by duly executed stock powers, representing such Shareholder's Company Stock, and (ii) in the instance of an Optionholder, the Option Cancellation Agreement with respect to such Optionholder's Vested Options; (b) a Letter of Transmittal duly completed and validly executed in accordance with the instructions therein; and (c) an executed Joinder and Support Agreement (collectively, the "Security Deliveries").

1.8.3 At the Closing pursuant to Section 2.1.2, Buyer shall deliver to the Paying Agent, on behalf of all Securityholders, the consideration described in Section 2.1.2. Until so surrendered or until an Option Cancellation Agreement is entered into, as applicable, each such Certificate or Vested Company Option shall represent solely the right to receive a portion (if any) of the Merger Consideration, subject to and payable in accordance with Section 1.8 and the other provisions of this Agreement. Notwithstanding the foregoing, if any Certificate shall have been lost, stolen or destroyed, then, upon the making of an affidavit of such fact by the Person claiming such Certificate to be lost, stolen or destroyed, the Paying Agent shall issue, in exchange for such lost, stolen or destroyed Certificate or Company Option, the Merger Consideration or other consideration hereunder to be paid in respect of the shares of Company Stock, as applicable, represented by such Certificate, as applicable, as contemplated by this Section 1.8. Notwithstanding anything herein to the contrary, and for the avoidance of doubt, (a) all payments to be made to the Optionholders pursuant to this Agreement shall be paid by the Paying Agent to the Company's payroll processor for further payment by the Payroll Processor to each such Optionholder, less required withholdings and deductions (to be handled by such Payroll Processor), subject to and in accordance with this Agreement and the Payments Schedule; and (b) the aggregate cash amount due to any Management Investor shall be reduced by the Management Investment Amount allocated to such Management Investor, as set forth in the Payments Schedule.

1.9. Required Withholding. Each of Buyer, the Escrow Agent, the Paying Agent, the Company, and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement, the Paying Agent Agreement, or the Escrow Agreement to any Securityholder such amounts as may be required to be deducted or withheld therefrom under the Code, or under any provision of state, local or non-United States Tax Law or under any other applicable Law. To the extent such amounts are so deducted or withheld, such deducted or withheld amounts shall be paid over to the appropriate Taxing Authority (with copies of the appropriate receipts for such payments provided to the Representative) and shall be treated for all purposes under this Agreement as having been paid to the Person to whom such consideration would otherwise have been paid.

1.10. Dissenting Shares.

1.10.1 Notwithstanding any provision of this Agreement to the contrary, any Shares that are outstanding immediately prior to the Effective Time and which are held by Shareholders (a) who have not voted in favor of the Merger or consented thereto in writing, (b) who have demanded, properly in writing, payment for such Shares, as applicable, in accordance with Section 92A.380 of the Nevada Act (a "Dissenter Payment"), and (c) who have not withdrawn such demand or been deemed to have forfeited the right to a Dissenter Payment (such Shares being referred to as "Dissenting Shares") will no longer be outstanding and will not be converted into the right to receive the portion of the Merger Consideration pursuant to Section 1.7, but instead will be converted in to the right to receive the Dissenter Payment in accordance with the Nevada Act, subject to all applicable withholding. If any Shareholder fails to perfect, effectively withdraws or otherwise loses its rights to a Dissenter Payment for such Shares under the Nevada Act, then, as of the later of the Effective Time or the occurrence of such event, such Shareholder's Shares will automatically be converted into and represent the right to receive (subject to the provisions of this Section 1.10), without any interest thereon, a cash amount that would have been payable to such Shareholder pursuant to Section 1.7 had such Shareholder tendered such Shareholder's Security Deliveries prior to the Closing.

1.10.2 The Company will give Buyer written notice of any demand for a Dissenter Payment received by the Company in accordance with Section 92A.380 of the Nevada Act, withdrawals of such demands, and any other instruments served pursuant to the Nevada Act and received by the Company. The Company shall have the opportunity to direct and control all negotiations and proceedings with respect to any demand for Dissenter Payment prior to the Closing, provided that (a) the Company shall keep Buyer informed of the status of such negotiations and proceedings, (b) Buyer shall have the right to participate in such negotiations and proceedings with counsel of its choice, whose fees and expenses shall be borne by Buyer, and (c) neither the Company nor the Representative shall settle such claims and procedures without the prior written consent of Buyer.

1.10.3 Upon a final non-appealable award of any Dissenter Payments by a court of competent jurisdiction to any holder of Dissenting Shares, the Representative shall direct the Paying Agent to promptly pay to such holder the amount of such award and any costs awarded with respect thereto. Buyer shall be indemnified for all Dissenter Payments and any costs awarded by a court of competent jurisdiction to the holders of Dissenting Shares, to the extent paid by Buyer (on behalf of the Surviving Corporation).

1.11. Tax Characterization. The Parties intend that, for U.S. federal and applicable state income Tax purposes, the Merger shall be treated as a taxable sale by Securityholders of their Company Stock to Buyer, and each party hereto shall report the Transactions on a basis consistent with such characterization unless otherwise required to by applicable Law, provided, however, that the Parties recognize that certain Securityholders who receive cash in exchange for their Company Stock in the Merger may be eligible for the exclusions set forth in Section 1202(a) of the Code to the extent any such Securityholders otherwise qualify for such exclusions.

2. Closing. The closing of the Merger and the other Transactions (collectively, the "Closing") shall take place by electronic exchange of documents as promptly as practicable (but in no event later than the fifth (5th) Business Day) following the satisfaction or waiver in writing of all conditions to the obligations of the Parties to consummate the Transactions (other than conditions with respect to actions the respective Parties shall take at the Closing itself), subject in all cases to Section 9 herein. The date of the Closing is referred to as the "Closing Date," and the effective time of the Closing on the Closing Date shall be 12:01am ET.

2.1. Articles of Merger Filing; Payments at Closing. At the Closing, subject to the satisfaction or waiver of each of the conditions specified in Section 7.1 and Section 7.2 herein:

2.1.1 The Company and Merger Sub shall cause the Articles of Merger to be executed and filed with the Secretary of State of Nevada.

2.1.2 The aggregate consideration to the Securityholders pursuant to the Merger shall equal $95,000,000.00 (the "Base Purchase Price"), subject to Section 2.1.3 and Section 2.3, and as may be adjusted in accordance with Section 2.3 (such adjusted amount, the "Merger Consideration").

2.1.3 At the Closing, the Buyer shall:

(a) pay to the Paying Agent, on behalf of the Securityholders, an amount equal to (i) the Base Purchase Price, minus (ii) the excess (if any) of the Target Net Working Capital over the Estimated Net Working Capital, plus (iii) the excess (if any) of the Estimated Net Working Capital over the Target Net Working Capital, plus (iv) the sum of the Estimated Cash, minus (v) the sum of the Estimated Transaction Expenses, minus (vi) the sum of the Estimated Indebtedness, minus (vii) the Adjustment Escrow Amount, minus (viii) the Indemnification Escrow Amount, minus (ix) the Reserve Amount, and minus (x) the Management Investment Amount, by wire transfer of immediately available funds to the bank account designated in writing by the Paying Agent, which such account shall be designated at least three (3) Business Days prior to the Closing Date, with such amount to be allocated among the Securityholders in accordance with the Payment Schedule;

(b) pay to the Persons entitled to same, on behalf of the Securityholders or the Company, as applicable, the aggregate amount of the Estimated Transaction Expenses, by wire transfer of immediately available funds in the amount and to the bank accounts designated in writing by the Company, which such accounts shall be designated at least three (3) Business Days prior to the Closing Date;

(c) pay to the Persons entitled to same, if any, on behalf of the Company, the aggregate amount of the Estimated Indebtedness, other than the Indebtedness identified on Exhibit 2.1.3(c), to the holders of such Indebtedness, by wire transfer of immediately available funds in the amounts and to the bank accounts designated in writing by the Company, which such accounts shall be designated at least three (3) Business Days prior to the Closing Date; at least three (3) Business Days prior to the Closing Date (the Company shall make arrangements satisfactory to Buyer for the holders of such Estimated Indebtedness to provide to Buyer recordable form Lien releases in connection with the Closing);

(d) deposit with the Escrow Agent, in readily available funds, the Escrow Funds;

(e) deposit with the Escrow Agent, in readily available funds, the Reserve Amount; and

(f) retain the Management Investment Amount, in order to secure the payment obligations of the Management Investors under the Subscription Agreements.

2.2. Escrow. Subject to all other remedies available to Buyer hereunder, the Escrow Funds shall secure (a) Shareholders' obligation pursuant to Section 7 of this Agreement to pay their portion of the retention under the R&W Policy, and (b) Shareholders' obligations with respect to any adjustments to the Merger Consideration in accordance with Section 2.3 of this Agreement. The Escrow Funds and the Reserve Amount shall be held and released by the Escrow Agent pursuant to the terms of an Escrow Agreement by and among Buyer, Representative, and the Escrow Agent, substantially in the form attached hereto as Exhibit 2.2 (the "Escrow Agreement").

2.3. Purchase Price Adjustments.

2.3.1 No later than three (3) Business Days prior to the Closing, Representative shall prepare and deliver, or cause the Company to prepare and deliver, to Buyer an officer's certificate of the Company that contains a good faith and reasonable best estimate of (a) the Net Working Capital as of the close of business of the day immediately preceding the Closing Date (the "Estimated Net Working Capital"), (b) the amount of Cash of the Company as of the close of business of the day immediately preceding the Closing Date (the "Estimated Cash"), (c) the amount of Indebtedness of the Company calculated through and including the Closing that will be unpaid immediately prior to the Closing (including final bills and wire transfer instructions as applicable) (the "Estimated Indebtedness"), and (d) the Transaction Expenses calculated through and including the Closing that will be unpaid immediately prior to the Closing, plus the aggregate amount of the Transaction Expenses that will become payable after the Closing, to the extent calculable (the "Estimated Transaction Expenses"), which Estimated Net Working Capital, Estimated Cash, Estimated Indebtedness, and Estimated Transaction Expenses shall be prepared in accordance with the methodology, clarifications, and exceptions set forth on Exhibit 2.3.1 and, to the extent not set forth thereon, in accordance with the same accounting methods, standards, policies, practices, classifications, estimation methodologies, assumptions, procedures, and level of prudence as were used to prepare the Financial Statements (the "Accounting Methodology").

2.3.2 Within sixty (60) calendar days after the Closing Date, Buyer shall prepare and deliver to Representative a statement (the "Closing Statement") setting forth Buyer's calculation of (a) the Net Working Capital of the Business as of the close of business of the day immediately preceding the Closing Date (the "Net Working Capital Calculation"), (b) the amount of Cash of the Company as of the close of business of the day immediately preceding the Closing Date (the "Closing Cash"), (c) the amount of Indebtedness of the Company calculated through and including the Closing unpaid immediately prior to the Closing (the "Closing Indebtedness"), (d) the Transaction Expenses calculated through and including the Closing unpaid immediately prior to the Closing, plus the aggregate amount of the Transaction Expenses paid or payable after the Closing, to the extent calculable (the "Closing Transaction Expenses"), and (e) Buyer's proposed calculation of the Adjustment Calculation. The Closing Statement, the Net Working Capital Calculation, the Closing Cash, the Closing Indebtedness, the Closing Transaction Expenses, and the Adjustment Calculation as determined by Buyer shall be prepared using the Accounting Methodology.

2.3.3 On or prior to the thirtieth (30th) calendar day following Buyer's delivery of the Closing Statement, the Representative shall have the right to give Buyer a written notice stating in reasonable detail any and all of the Securityholders' non-duplicative objections (an "Objection Notice") to the Closing Statement or the Buyer's determination of the Net Working Capital Calculation, the Closing Cash, the Closing Indebtedness, the Closing Transaction Expenses, or the Adjustment Calculation. During such thirty (30) calendar day period, Buyer shall provide the Representative, its accountants and representatives acting for the Representative with access, at reasonable times and upon reasonable prior notice, to the Company's Books and Records and the Company's accountants. Any Objection Notice shall specify in reasonable detail (if available to Representative) the dollar amount of any objection and the reasonable basis or bases therefor (and shall include necessary supporting documentation available to Representative). The failure by the Representative to deliver an Objection Notice within such thirty (30) day period shall constitute the Securityholders' acceptance of all of the items set forth in the Closing Statement, which shall be final and binding on all Securityholders for all purposes of this Agreement, in which case the amounts set forth in the Closing Statement shall constitute the "Final Adjustment Calculation" for purposes of Section 2.3.5.

2.3.4 Following Buyer's receipt of any Objection Notice, the Representative and Buyer shall attempt to negotiate in good faith to resolve such dispute. In the event that the Representative and Buyer fail to agree on any proposed adjustments set forth in the Objection Notice, within fifteen (15) days after Buyer receives the Objection Notice, the parties may elect by mutual agreement to extend the period of negotiation and may elect by mutual agreement to engage a mediator to assist in such negotiation. To the extent that any matter remains unresolved following negotiations, the Representative and Buyer agree that an Accounting Arbitrator shall make the final, binding determination, absent fraud or manifest error, regarding the proposed adjustments set forth in the Objection Notice that are not resolved by the Representative and Buyer (the "Adjustment Calculation Disputed Items"). Buyer, on the one hand, and the Representative, on the other hand, each shall provide the Accounting Arbitrator with their respective determinations of the Adjustment Calculation Disputed Items. The Accounting Arbitrator shall make its determination of the Adjustment Calculation Disputed Items and the resultant Final Net Working Capital Calculation, Final Cash, Final Indebtedness, Final Transaction Expenses, and Final Adjustment Calculation which determination shall be final and binding on Securityholders and Buyer. The determination of any of the Adjustment Calculation Disputed Items by the Accounting Arbitrator shall be within, and limited by, the range comprised of the respective determination of each of the Parties' calculation with respect to such Adjustment Calculation Disputed Items. The Accounting Arbitrator shall make its determination, in writing, and as soon as practicable, but no later than thirty (30) calendar days after all hearings related thereto, based solely on presentations and supporting material provided by the Parties and not pursuant to any independent review. The fees, costs, and expenses of the Accounting Arbitrator shall be paid pro rata by Buyer, on the one hand, and the Securityholders, on the other hand, in relation to the proportional difference between the Accounting Arbitrator's determination of the Final Adjustment Calculation and Buyer's and Representative's respective determinations of the Adjustment Calculation. As used herein, "Final Net Working Capital Calculation" means the Net Working Capital Calculation as ultimately determined in accordance with this Section 2.3, "Final Cash" means the amount of Cash as ultimately determined in accordance with this Section 2.3, "Final Indebtedness" means the amount of Indebtedness as ultimately determined in accordance with this Section 2.3, and "Final Transaction Expenses" means the amount of Transaction Expenses as ultimately determined in accordance with this Section 2.3.

2.3.5 Adjustment Calculation Payment.

(a) If the Final Adjustment Calculation is a negative number after final determination pursuant to this Section 2.3 (the amount by which the Final Adjustment Calculation is less than zero, the "Net Deficit Amount"), then Buyer and Representative shall execute joint written instructions to the Escrow Agent to (i) release and pay out to Buyer, from the Adjustment Escrow Funds, the Net Deficit Amount, and (ii) simultaneously with the payment to Buyer of the Net Deficit Amount, to release and pay out to the Paying Agent, from the Adjustment Escrow Funds, the amount by which the Net Deficit Amount is less than the Adjustment Escrow Amount, if any (which released amount shall be allocated among the Shareholders in accordance with the Payment Schedule). If the Net Deficit Amount exceeds the amount in the Adjustment Escrow Funds, then the Securityholders shall, within ten (10) Business Days following such release and payout, pay to Buyer the amount by which the Net Deficit Amount exceeds the amount in the Adjustment Escrow Funds.

(b) If the Final Adjustment Calculation is a positive number after final determination pursuant to this Section 2.3 (the amount by which the Final Adjustment Calculation is greater than zero, the "Net Surplus Amount"), then (i) Buyer shall pay, or shall cause the Surviving Corporation to pay, in each case to the Paying Agent, the Net Surplus Amount (which amount shall be allocated among the Securityholders in accordance with the Payment Schedule), and (ii) Buyer and Representative shall execute joint written instructions to the Escrow Agent to release and pay out to the Paying Agent the Adjustment Escrow Amount from the Escrow Funds (which amount shall be allocated among the Shareholders in accordance with the Payment Schedule).

(c) If the Final Adjustment Calculation is zero after final determination pursuant to this Section 2.3, then Buyer and Representative shall execute joint written instructions to the Escrow Agent to release and pay out to the Shareholders the Adjustment Escrow Amount from the Escrow Funds (which amount shall be allocated among the Shareholders in accordance with the Payment Schedule).

(d) Any amount due under this Section 2.3.5 shall be paid within five (5) Business Days after the date of final determination pursuant to this Section 2.3. The Merger Consideration shall be deemed to be increased or decreased, as applicable, by any payments made pursuant to this Section 2.3.5.

2.4. Payment Schedule.

2.4.1 Estimated Payment Schedule. Attached hereto as Exhibit 2.4.1 is a schedule (the "Estimated Payment Schedule") containing the following information with respect to each of the Securityholders as of the date of this Agreement: (a) the country and state of residence or primary place of business, as applicable, of each Securityholder; (b) the Company Stock held by such Securityholder, designated by class, if any; (c) the Company Options held by such Securityholder, if any, along with the class of Company Stock subject to such Company Options, the award type (including whether each such Company Options were granted as an Incentive Stock Option or a Non-Qualified Incentive Stock Option), the exercise price per share of such Company Options, whether any such Company Options are unvested as of the Effective Time; (d) the Securityholder Pro Rata Share of such Securityholder; (e) the Management Investment Amount allocated to such Securityholder, if such Securityholder is a Management Investor for the issuance of Buyer Common Stock; and (f) the amounts payable to each such Securityholder at the Closing under Section 2.1.3, assuming a Closing Date as indicated on the Estimated Payment Schedule, and assuming the results of certain of the adjustments set forth in Section 2.3). The Estimated Payment Schedule was prepared by the Company in accordance with the Company's Articles of Incorporation in effect immediately prior to the Closing and this Agreement.

2.4.2 Payment Schedule. No later than three (3) Business Days prior to the Closing, Representative shall prepare and deliver, or cause the Company to prepare and deliver, to Buyer, along with the certificate contemplated under Section 2.3.1, a modified version of the Estimated Payment Schedule including the same information provided in the Estimated Payment Schedule with appropriate updates so that the information provided is current as of such time delivered, including with respect to the amounts payable to each such Securityholder at the Closing under Section 2.1.3 (such updated version, the "Payment Schedule"). The Payment Schedule shall be consistent with the Estimated Payment Schedule and shall be prepared by the Company in accordance with the Company's Articles of Incorporation in effect immediately prior to the Closing and this Agreement. Notwithstanding anything to the contrary in this Agreement, the Buyer shall be entitled to rely on, without any obligation to investigate or verify the accuracy or correctness thereof, the allocation methodology set forth in the Payment Schedule.

3. Representations and Warranties Regarding Securityholders. As a material inducement to Buyer to enter into the Transaction Documents and to consummate the Transactions, except as otherwise set forth in the Securityholder Disclosure Schedules heretofore delivered by the Company and each Securityholder to and acknowledged as received by Buyer (which disclosures shall reference the specific sections and subsections below, as applicable, but shall also qualify other sections or subsections in this Section 3 and in the Securityholder Disclosure Schedules but only to the extent it is reasonably apparent on its face from a reading of the disclosure item that the disclosure is applicable to the other section or subsection), each of the Securityholders, severally but not jointly, by execution of such Securityholders' respective Joinder and Support Agreement, Shareholder Consent (as applicable), and Letter of Transmittal, hereby represents and warrants to Buyer (as of the date hereof and as of the Closing, except in each case to the extent any representation and warranty speaks as of any other specific date) as set forth below:

3.1. Authorization. Each Securityholder that is an individual has the necessary legal capacity, and each Securityholder that is not an individual has all requisite power and authority and has taken all necessary action, to enter into, deliver, and perform, in accordance with their terms, this Agreement and any other Transaction Documents to which such Securityholder is a party and to consummate the Transactions. This Agreement and each of the other Transaction Documents to which such Securityholder is a party has been duly and validly executed and delivered by such Securityholder. Assuming this Agreement and the other Transaction Documents to which such Securityholder is a party are duly and validly executed and delivered by the other parties hereto and thereto, this Agreement and each other Transaction Document to which such Securityholder is a party are the valid and legally binding obligations of such Securityholder, enforceable against such Securityholder in accordance with their respective terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought.

3.2. Ownership. Each Securityholder is the record and beneficial owner of, free and clear of all Liens, and has good, valid and marketable title to, the Securities listed next to such Securityholder's name on the Estimated Payment Schedule. No Securityholder is the subject of any bankruptcy, reorganization or similar Proceeding. Except for this Agreement and as set forth on Schedule 3.2, (a) there are no outstanding Contracts or understandings between a Securityholder and any other Person with respect to the acquisition, disposition, transfer, registration or voting of or any other matters in any way pertaining or relating to, or any other restrictions on any of such Securityholder's Securities and (b) no Securityholder (nor any other Person) has any right whatsoever to receive or acquire any ownership interest or other securities in the Company.

3.3. Noncontravention. Except as set forth on Schedule 3.3, no Consent, exemption declaration by, filing with, other action by or notification to any Governmental Authority or any other Person is required in connection with the execution, delivery and performance by a Securityholder of this Agreement or the other Transaction Documents to which such Securityholder is a party or the consummation of the Transactions.

3.4. Proceedings. Except as set forth on Schedule 3.4, there are no (a) outstanding Orders against any Securityholder, (b) Proceedings pending or, to the knowledge of the Securityholder, threatened against any Securityholder, or (c) investigations by any Governmental Authority that are pending or, to the knowledge of the Securityholder, threatened against any Securityholder, in each case, that would reasonably be expected to give rise to any legal restraint or a prohibition against the Transactions or seek to prevent, impair or delay any Securityholder's ability to consummate the Transactions.

3.5. Broker Fees. Except as set forth on Schedule 3.5, there are and will be no claims for brokerage commissions, finders' fees or similar compensation in connection with the Transactions based on any Contract, arrangement or agreement to which a Securityholder is a party or to which such Securityholder is subject for which the Company or Buyer or their respective Affiliates could become obligated or incur as a Liability.

4. Representations and Warranties Concerning the Company. As a material inducement to Buyer to enter into the Transaction Documents and to consummate the Transactions, except as otherwise set forth in the Securityholder Disclosure Schedules heretofore delivered by the Company and each Securityholder to and acknowledged as received by Buyer (which disclosures shall reference the specific sections and subsections below, as applicable, but shall also qualify other sections or subsections in this Section 3 and in the Securityholder Disclosure Schedules but only to the extent it is reasonably apparent on its face from a reading of the disclosure item that the disclosure is applicable to the other section or subsection), the Company hereby represents and warrants to Buyer (as of the date hereof and as of Closing, except in each case to the extent any representation and warranty speaks as of any other specific date) as set forth below:

4.1. Organization and Authority.

4.1.1 The Company is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Nevada. The Company is qualified to do business and is in good standing (or equivalent status) in each jurisdiction in which the property leased or operated by it or the nature of the business conducted by it makes such qualification necessary, and each such jurisdiction is listed on Schedule 4.1.1. The Company has all requisite power and authority to own, lease and operate its properties and carry on its business as now conducted. The Company has all requisite power and authority to enter into and deliver this Agreement and the other Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. The copies of the Company's organizational documents which have been delivered to Buyer reflect all amendments thereto and are true, correct and complete in all respects. The minute books and all other Books and Records of the Company which have been delivered to Buyer are true, correct and complete in all material respects. The Company is not in default in any material respect under or in violation of any provision of its organizational documents.

4.1.2 Schedule 4.1.2 sets forth all of the members of the board of directors and the officers of the Company.

4.2. Authorization. The execution, delivery, and performance by the Company of this Agreement and the other Transaction Documents to which it is a party and the consummation of the Transactions have been duly and validly authorized by all necessary corporate action and no other action or other proceeding on the part of it is necessary or required. This Agreement and each other Transaction Document to which the Company is a party has been duly and validly executed and delivered by it. Assuming this Agreement and the other Transaction Documents to which the Company is a party are duly and validly executed and delivered by the other parties hereto and thereto, this Agreement and each other Transaction Document to which it is a party are the valid and legally binding obligations of the Company, enforceable against it, as applicable, in accordance with their respective terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefore may be brought. Except as set forth on Schedule 4.2, no Consent, Order, declaration or filing with, or notification to any Governmental Authority or any other Person is required in connection with the execution, delivery and performance by the Company of this Agreement or the other Transaction Documents to which the Company is a party or the consummation of the Transactions.

4.3. Capitalization.

4.3.1 Schedule 4.3.1 sets forth the authorized and outstanding ownership interest or other securities of the Company. All of the outstanding ownership interests and other securities of the Company have been duly authorized, are validly issued, are fully paid and nonassessable, and are owned of record and beneficially by the equityholders set forth on Schedule 4.3.1, free and clear of all Liens, and are not subject to any preemptive, subscription, or similar rights that will survive the Closing. Other than the equity interests or other securities set forth on Schedule 4.3.1, there are no other ownership interests or other securities or participations or other equivalents (however designated and whether voting or nonvoting) outstanding of the Company. No Person is contesting the ownership of the equity or other securities of the Company or any distributions or contributions relating thereto. Except for this Agreement and as may be set forth on Schedule 4.3.1 there are no outstanding or authorized options, warrants, rights, Contracts, pledges, calls, puts, rights to subscribe, redeem, repurchase or otherwise acquire, conversion rights or other agreements, commitments or obligations (contingent or otherwise) to which the Company is a party or which is binding upon the Company providing for the issuance, sale, disposition or acquisition of any of its equity or any rights or interests exercisable therefor. All prior repurchases of equity consummated by the Company were effected in compliance with all applicable Laws and Contracts, and there are no contingent or other Liabilities remaining in connection therewith. Except as set forth on Schedule 4.3.1, there are no outstanding or authorized equity appreciation, phantom stock, or similar rights with respect to the Company. The Company has not violated any foreign, federal, or state securities or "blue sky" Laws in connection with the offer, sale, or issuance of its equity. Except as set forth on Schedule 4.3.1, there are no Contracts with respect to the voting or transfer of the securities of the Company. There are no bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which any equityholder of the Company may vote. Each Company Option was granted with an exercise price that is at least equal to the per share fair market value of the underlying Company Stock as of the date that the Company Option was granted. Securityholders are the sole record and beneficial owners of all of the outstanding ownership interests or other securities of the Company.

4.3.2 Except as set forth on Schedule 4.3.2, the Company does not own, directly or indirectly, (a) any Subsidiary, (b) with respect to any Person that is a corporation, any shares, interests, participations or other equivalents (however designated and whether voting or nonvoting) of capital stock of such Person or any right, warrant or option to acquire any of the foregoing, or (c) with respect to any Person that is not a corporation, any general partnership interests, limited partnership interests, membership or limited liability company interests, beneficial interests or other equity interests of or in such Person (including any common, preferred or other interest in the capital or profits of such Person, and whether or not having voting or similar rights), or any right, warrant or option to acquire any of the foregoing.

4.3.3 The Estimated Payment Schedule is (and, when delivered, the Payment Schedule will be) true, correct, and complete, and the allocation methodology set forth in the Estimated Payment Schedule is (and, when delivered, in the Payment Schedule will be) in accordance with the Company's Articles of Incorporation in effect immediately prior to the Closing.

4.4. Noncontravention. Except as set forth on Schedule 4.4, the execution, delivery, and performance of this Agreement and the other Transaction Documents to which the Company or any Securityholder is a party, the consummation by the Company or any Securityholder of the Transactions, and compliance by the Company and Securityholders with any provision hereof or thereof will not, directly or indirectly:

4.4.1 violate, conflict with, result in any breach or constitute a default (with or without notice or lapse of time, or both) under, result in, or give rise to a right of, termination, amendment, modification, cancellation, or acceleration of any right or obligation under, or the loss of any benefit under, create in any party the right to accelerate, terminate, modify, amend or cancel under, or require any notice, authorization or consent under the Company's organizational documents or any Contract to which the Company is a party or by which any of its properties or assets are bound;

4.4.2 result in the creation or imposition of any Lien upon any property or assets, or any of the equity or other securities, of the Company;

4.4.3 contravene, conflict with, require any consent, or notice under or result in a violation or breach of the terms or requirements of any Law, Order to which the Company is subject or Authorization; or

4.4.4 require any Consent or other action by or notice to any Governmental Authority or other Person under the provisions of any Law, Order to which the Company is subject or Authorization.

4.5. Company Assets. Except as set forth on Schedule 4.5, the Company has good and valid title to, or a valid leasehold interest in, all properties and assets owned or used by it or reflected on the Latest Balance Sheet or acquired after the date thereof, free and clear of all Liens (other than properties and assets disposed of in the Ordinary Course of Business since the date of such balance sheet). All buildings, plants, structures, fixtures, machinery, equipment, vehicles and other tangible personal property or assets of the Company are structurally sound, are in good operating condition and repair, are adequate for the uses to which they are being put, are suitable for immediate use in the Ordinary Course of Business, are free from latent and patent defects and have been maintained by the Company in the Ordinary Course of Business and are not in need of replacement, maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The assets of the Company constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary for the ownership, lease or operation of, or necessary for them to own, lease and operate, their assets and properties and the Business as heretofore conducted.

4.6. Broker Fees. Except for the fees payable to Canaccord Genuity Group Inc., there are and will be no claims for brokerage commissions or finders' fees in connection with the Transactions based on any Contract, arrangement, or agreement to which the Company or any Securityholder is a party or to which the Company or any Securityholder is subject. In any event, neither the Buyer, Merger Sub, nor any Affiliate of the Buyer or Merger Sub, shall have any Liability for any brokerage commissions or finders' fees on behalf of Company in connection with the Transactions based on any Contract, arrangement, or agreement to which the Company or any Securityholder is a party or to which the Company or any Securityholder is subject.

4.7. Financial Statements; Indebtedness; Other Financial Matters.

4.7.1 Attached as Schedule 4.7.1 are the following financial statements of the Company (the "Financial Statements"): (a) the audited balance sheet of the Company for the years end December 31, 2022 (the "Year-End Balance Sheet"), 2021, and 2020, and the related audited statements of income, equity, and cash flows and combined supplementary information for such annual period then ended, together with any notes thereto and any report thereon, and (b) the unaudited balance sheet of the Company as of August 31, 2023 (the "Latest Balance Sheet") and the related unaudited statements of income and cash flows for the 8-month period then ended.

4.7.2 The Financial Statements (including the notes thereto, if any) are in accordance with the Books and Records of the Company, present fairly in all material respects the financial condition of the Company as of the respective dates indicated and the results of operations, capital contributions and cash flows for the respective periods covered thereby, and have been prepared and determined in accordance with GAAP consistently applied throughout the periods indicated, except in the case of the unaudited Financial Statements, to changes resulting from normal or recurring year-end adjustments in accordance with GAAP (in each case which are not, individually or in the aggregate, material to the Company) and the absence of notes. The Company maintains a system of internal accounting controls designed to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of the Financial Statements of the Company in conformity with GAAP and to maintain accountability of the Company's assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with the existing assets at regular intervals and appropriate action is taken with respect to any differences. The Company maintains systems of internal controls that are designed to provide reasonable assurances regarding the reliability of the Financial Statements. There are no material weaknesses or significant deficiencies in the internal controls of the Company that limit the reliability of the Financial Statements. To the Knowledge of the Company, there has been no, and there is no basis for, a finding of fraud or improper payments on the part of the Company, and the Company has not taken any action nor is it a party to any Proceeding that could reasonably be expected to give rise to any Liability for fraud or improper payments on the part of the Company. The Company has in place a revenue recognition policy consistent with GAAP.

4.7.3 Schedule 4.7.3 sets forth a true, correct, and complete (a) accounting of the Indebtedness of the Company, calculated as of the date hereof in accordance with GAAP; (b) list of all bank accounts or other accounts, certificates of deposit, marketable securities, other investments, safe deposit boxes, lock boxes and safes of the Company and all Persons who are signatories thereunder or who have access thereto, and (c) list of the names of all Persons holding general or special powers of attorney from the Company.

4.7.4 All accounts receivable of the Company reflected on the Latest Balance Sheet, are valid, bona fide obligations in favor of the Company arising from sales actually made or services actually rendered in the Ordinary Course of Business. All of the Company's accounts receivable are reflected properly on its Books and Records and, except to the extent expressly reserved against on the Financial Statements or in such other amount that is not material in the aggregate, are stated on the Financial Statements at net realizable value. There is no contest, claim or right of set-off, other than returns or discounts in the Ordinary Course of Business, under any Contract with any obligor of an accounts receivable relating to the amount or validity of such accounts receivable, except to the extent of the reserve reflected in the Financial Statements or in such other amount that is not material in the aggregate. Schedule 4.7.4 contains a complete and accurate list of all accounts receivable of the Company as of August 31, 2023, which list sets forth the aging of each such accounts receivable.

4.8. No Undisclosed Liabilities. Except as set forth on Schedule 4.8, the Company has no Liabilities (whether absolute or contingent, matured or unmatured, known or unknown) other than (a) Liabilities reflected on the Latest Balance Sheet and (b) Liabilities which have arisen after the date of the Latest Balance Sheet in the Ordinary Course of Business and which are not material in amount.

4.9. Absence of Certain Changes. Since the date of the Latest Balance Sheet, the Company has conducted its Business in the Ordinary Course of Business and there has occurred no fact, event, development or circumstance which, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 4.9, since the date of the Latest Balance Sheet, the Company has not:

4.9.1 sold, leased, assigned, licensed, or transferred any of its property or assets or portion thereof (other than collection of accounts receivable in the Ordinary Course of Business) or mortgaged, pledged or subjected them to any additional Liens;

4.9.2 suffered any theft, damage, destruction or casualty loss exceeding $10,000 in the aggregate, whether or not covered by insurance;

4.9.3 declared, set aside or paid any distribution of property or assets other than Cash to any Securityholder of the Company with respect to its equity or other securities purchased, redeemed or otherwise acquired any of its equity or other securities (including any warrants, options or other rights to acquire its Common Stock or other Securities);

4.9.4 amended, restated or amended and restated, or authorized any of the foregoing to, its articles of incorporation or bylaws;

4.9.5 issued, sold or transferred any of its Common Stock or other Securities, securities convertible into its Common Stock or other Securities, or warrants, options or other rights to convert into, exchange or acquire its Common Stock or other Securities;

4.9.6 sold, assigned, transferred, or permitted to lapse any Intellectual Property, or disclosed, or permitted disclosure (except as necessary in the conduct of its Business), to any person other than representatives of Buyer, any trade secret, formula or similar information not therefore a matter of public knowledge;

4.9.7 made or granted any bonus or any wage or salary increase to any employee or group of employees (other than wage or salary increases made in the Ordinary Course of Business), entered into any employment, sale bonus, stay bonus or severance Contract with any current or former officer, employee, director or consultant of the Company, or made or granted any increase in any Employee Benefit Plans, amended, modified or terminated any Employee Benefit Plans or adopted any Employee Benefit Plans;

4.9.8 adopted any profit sharing, bonus, deferred compensation, retirement agreement or plan or other Employee Benefit Plan for or with any current or former employee, officer, consultant or director of the Company;

4.9.9 (A) adopted or changed any of its accounting (financial or Tax) policies, practices, methods, reporting or procedures, except as required by GAAP, (B) made or changed any election in respect of Taxes, (C) settled or compromised any Tax liability, claim or assessment, (D) entered into any closing agreement relating to any Tax, (E) agreed to an extension or waiver of a statute of limitations period applicable to any Tax claim or assessment, (F) failed to pay any Tax when due and payable, (G) surrendered any right to claim a Tax refund or made a claim for refund of Taxes, (H) prepared or filed any Tax Return (or amendment thereof) unless such Tax Return shall have been prepared in a manner consistent with past practice of the Companies, (I) incurred any material liability for Taxes other than in the ordinary course of business consistent with past practice or (J) filed any amended Tax Return or any past-due Tax Return or filed of any Tax Return in a jurisdiction where a Tax Return of the same type in the immediately preceding Tax period was not filed;

4.9.10 entered into, terminated, or received notice of termination of any Contract or transaction (or series of related Contracts or transactions) involving a total remaining commitment by or to the Company of at least $25,000;

4.9.11 entered into any settlement, conciliation or similar Contract, released any claims possessed by it, canceled any Indebtedness owed to it or waived any rights of value, in each case, involving amounts in excess of $25,000;

4.9.12 made any capital expenditures or commitments for capital expenditures that aggregate in excess of $25,000 or entered into any lease of capital equipment or real property which involves an annual payment in excess of $25,000;

4.9.13 conducted its cash management customs and practices other than in the Ordinary Course of Business;

4.9.14 entered into any Contracts containing any Restrictive Business Covenants; or

4.9.15 committed or agreed to do any of the foregoing.

4.10. Legal Compliance. Except as set forth on Schedule 4.10, the Company has been and is in compliance with all applicable Laws, Orders and Authorizations applicable to its assets, businesses, properties and operations. Except as set forth on Schedule 4.10, no investigation, audit or review by any Governmental Authority with respect to the Company or the Business is pending or, to the Knowledge of the Company, threatened, nor has any Governmental Authority provided written notice or, to the Knowledge of the Company, oral notice to the Company of its intention to conduct the same. Except as set forth on Schedule 4.10, to the Knowledge of the Company, the Company (a) has not been charged with, and is not now under investigation with respect to, any actual or alleged violation of any applicable Law or other requirement of a Governmental Authority, (b) is not party to or bound by any Order or (c) has not failed to file any report required to be filed with any Governmental Authority.

4.11. Tax Matters. Except as set forth on Schedule 4.11:

4.11.1 The Company has timely and properly filed all Tax Returns required to be filed by it, and each such Tax Return is true, correct and complete in all material respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been timely paid. Schedule 4.11.1 separately sets forth the states in which the Company has filed Tax Returns since its formation, identifies for each such jurisdiction the Tax Returns filed, and indicates those Tax Returns that have been audited. The Company has delivered or made available to Buyer correct and complete copies of all income Tax Returns and any other material Tax Returns of the Company for the prior three (3) years. None of the Tax Returns filed by the Company contain a disclosure statement under Section 6662 of the Code (or any similar provision of state, local or foreign Tax Law).

4.11.2 The Company has complied with the provisions of the Code relating to the withholding and payment of Taxes, including the withholding and reporting requirements under Code Sections 1441 through 1464, 3401 through 3406, and 6041 through 6049, as well as similar provisions under any other Laws, and has, within the time and in the manner prescribed by Law, withheld from employee wages and paid over to the proper Taxing Authorities all amounts required to be remitted. The Company has consistently treated any workers that it treats as independent contractors (and any similarly situated workers) as independent contractors for purposes of Section 530 of the Revenue Act of 1978. Except as set forth on Schedule 4.11.2, the Company has accurately classified all service providers as either employees or independent contractors for all Tax purposes. The Company (a) has collected and remitted all applicable sales or use Taxes to the appropriate Taxing Authority, or (b) has obtained, in good faith, any applicable sales or use Tax exemption certificates.

4.11.3 There is no action, suit, proceeding, audit, investigation, or claim against the Company for any Taxes which are owed by the Company and due under applicable Law, but have not been paid in full, and no material assessment, deficiency, or adjustment has been asserted, proposed, or threatened with respect to any Tax Return of or with respect to the Company. No action, suit, proceeding, audit, investigation, or claim has ever been received by the Company from any Taxing Authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation in the jurisdiction. Except as set forth on Schedule 4.11.3, (a) no audit of the Company by any Taxing Authority has ever been conducted, is currently pending or is threatened, and (b) no notice of any proposed Tax audit, or of any Tax deficiency or adjustment, has been received by the Company.

4.11.4 No position has been taken on any Tax Return with respect to the Business or operations of the Company for a taxable period for which the statute of limitations for the assessment of any Taxes with respect thereto has not expired that is substantially similar to any position which a Taxing Authority has successfully challenged in the course of an examination of a Tax Return of the Company. The Company has not participated in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b)(1) (other than such transactions that have been properly reported), or transactions that constitute "listed transactions" as such term is defined in Treasury Regulation Section 1.6011-4(b)(2).

4.11.5 The Company is not a party to or bound by any Tax sharing agreement, Tax indemnity obligation or similar Contract or practice with respect to Taxes (including any advance pricing agreement, Tax Closing Agreement or other agreement relating to Taxes with any Governmental Authority).

4.11.6 The Company has not been a member of an Affiliated Group, and the Company has no Liability for Taxes of any other Person under Section 1.1502-6 of the Treasury Regulations (or any similar provision of Law), as a transferee or successor, by Contract or otherwise.

4.11.7 The Company is not a United Stated Real Property Holding Corporation as such term is defined in Section 897 of the Code.

4.11.8 There are no outstanding requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment or collection of any Taxes or deficiencies against the Company.

4.11.9 There are no Liens upon any properties or assets of the Company arising from any failure or alleged failure to pay any Tax (other than Liens relating to Taxes for which adequate reserves have been recorded in line items on the Latest Balance Sheet).

4.11.10 The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any: (a) change in accounting method, or the use of a cash or an improper accounting method, for a Taxable period ending on or prior to the Closing Date; (b) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax legal requirement) executed on or prior to the Closing Date; (c) intercompany transactions as described in Treasury Regulation Section 1.1502-13 (or any corresponding or similar provision of state, local or foreign income Tax legal requirement) or excess loss account described in Treasury Regulation Section 1.1502-19 (or any corresponding or similar provision of state, local or foreign Income Tax legal requirement); (e) installment sale or open transaction disposition made on or prior to the Closing Date; (e) prepaid or deposit amount received on or prior to the Closing Date; (f) debt instrument held on or before the Closing Date that was acquired with "original issue discount" as defined in Section 1273(a) of the Code or is subject to the rules set forth in Section 1276 of the Code; (g) election under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign income Tax legal requirement) made on or prior to the Closing Date; (h) pursuant to Sections 951, 951A or 965 of the Code with respect to any interest held in a "controlled foreign corporation" (a "CFC") (as that term is defined in Section 957 of the Code) on or before the Closing Date, and (i) "minimum gain chargeback" provision with respect to "minimum gain" for periods (or portions of periods) ending on or prior to the Closing Date pursuant to Subchapter K of the Code. No Acquired Company is required to pay any installment of the "net tax liability" described in Section 965(h)(1) of the Code after December 31, 2017. The Company is not a cash basis taxpayer. The Company has not deferred the inclusion of any amounts in taxable income pursuant to IRS Revenue Procedure 2004-34, Treasury Regulations Section 1.451-5, Sections 451(c), 455, 456 or 460 of the Code or any corresponding or similar provision of law (irrespective of whether or not such deferral is elective). The Company has not agreed to, nor is it required to make, any adjustments under Section 481(a) of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) by reason of a change in method of accounting or otherwise, and neither the IRS nor any other Taxing Authority has proposed any such adjustment.

4.11.11 The Company has not been within the past two years, been a “distributing corporation” or a “controlled corporation” (as such terms are used in Section 355 of the Code) in a distribution intended to qualify in whole or in part for tax free treatment under Section 355 of the Code (or so much of Section 356 of the Code as relates to Section 355 of the Code).

4.11.12 The unpaid Taxes of the Company (a) did not, as of the date of the Latest Balance Sheet, exceed the reserve for Tax Liability set forth on the face of the Latest Balance Sheet (rather than in any notes thereto) and (b) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Company in filing its Tax Returns.

4.11.13 An election pursuant to Section 83(b) of the Code was timely and properly filed in connection with any transfer described in Section 83(a) of the Code of equity in the Company subject to a “substantial risk of forfeiture” (as defined in Section 83 of the Code and the Treasury Regulations promulgated thereunder) at the time of such transfer and the Company has a copy of each such election.

4.11.14 The Company has not received any Tax Ruling or entered into a Tax Closing Agreement with any Taxing Authority that would have a continuing effect after the Closing Date. For purposes of this Agreement, the term “Tax Ruling” shall mean written rulings of a Taxing Authority relating to Taxes, and the term “Tax Closing Agreement” shall mean a written and legally binding agreement with a Taxing Authority relating to Taxes. No power of attorney currently in force has been granted by the Company concerning any Tax matter.

4.11.15 The Company does not have, or has it ever had, a permanent establishment (as defined by applicable tax treaty) or other taxable presence in any foreign country. Schedule 4.11.15 sets forth all material Tax exemptions, Tax holidays, Tax concessions or other Tax reduction agreements with or granted by any taxing authority outside the United States applicable to either Company. The Company is in material compliance with the requirements for any such Tax exemption, Tax holiday, Tax concession or other Tax reduction agreement or arrangement.

4.11.16 The Company has no obligation to pay Taxes in the future pursuant to Section 965 of the Code.

4.11.17 The Company has not deferred any obligation to pay Taxes pursuant to Section 2302 of the CARES Act (or any corresponding or similar provision of law passed in connection with the CARES Act or other COVID-19 legislation).

4.11.18 The Company is not a party to any joint venture, partnership, or contract that is treated as a partnership for federal income Tax purposes. The Company has never owned, directly or indirectly, any equity interest in any controlled foreign corporation (as defined in Section 857 of the Code) or passive foreign investment company (as defined in Section 1297 of the Code).

4.11.19 The Company has no net operating losses or other Tax attributes presently subject to limitation under Section 382, 383, 384 or the federal consolidated return regulations (or any corresponding or similar provision of state, local or foreign Income Tax Law.

4.11.20 The Company has been classified as a C corporation for U.S. federal income tax purposes since 2012 and was classified as a partnership for U.S. federal income tax purposes prior to 2012.

4.11.21 The Company has complied all transfer pricing rules (including maintaining appropriate documentation for all transfer pricing agreements for purposes of Code Section 482 (or any similar provision of non-U.S. Legal Requirements).

4.12. Real Property.

4.12.1 The Company does not own, nor has the Company ever owned, any real property. Set forth on Schedule 4.12.1 is a true, correct and complete list of all real property leased or subleased to or by the Company (the "Leased Real Property"). The Leased Real Property comprises all of the real property used, operated on, leased or subleased by the Company, is suitable for the purposes for which it is currently used in connection with the Business, and has been maintained, in all material respects, in accordance with the terms of the Realty Leases.

4.12.2 For each Leased Real Property, Schedule 4.12.2 sets forth the street address thereof, if such property is leased or subleased to or by the Company, the rental amount currently being paid under such lease or sublease and the expiration of the term of such lease or sublease. The Company has previously delivered or made available to Buyer true, correct and complete copies of each of the leases and subleases, including any modifications or amendments thereto for the Leased Real Property (the "Realty Leases"). Except as set forth on Schedule 4.12.2, with respect to each of the Realty Leases: (a) each such Realty Lease is legal, valid, binding and enforceable and is in full force and effect and has not been modified, (b) the consummation of the Transactions do not require the Consent of, notice to or waiver of any party with respect to each such Realty Lease and the consummation of the Transactions will not result in a breach of, violation of or default under such Realty Lease, (c) the Company is not, and, to the Knowledge of the Company, no other party to the Realty Leases is, in breach, violation or default under any such lease or sublease, and no event has occurred or circumstance or condition exists which, with the delivery of notice, passage of time or both, would constitute such a breach, violation or default or permit the termination, modification or acceleration of rent under such Realty Lease, and all rent, additional rent and other amounts due and payable under the Realty Leases has been paid, (d) the Company has a valid leasehold interest in each of the Realty Leases, free and clear of any and all Liens, (e) there are no parties (other than the Company) in possession of any portion of the Leased Real Property, and (f) the Company has not entered into any written sublease, license, option, right, concession or other agreement or arrangement granting to any Person the right to use or occupy any Leased Real Property or any portion thereof or interest therein. The improvements on the Leased Real Property are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear, casualty and condemnation excepted and are adequate and suitable for the purposes for which they are presently being used. No portion of any Leased Real Property is subject to any pending condemnation or eminent domain Proceeding or other Proceeding by any Governmental Authority and, to the Knowledge of the Company, there is no threat of condemnation or eminent domain Proceedings or other Proceedings with respect thereto.

4.13. Intellectual Property.

4.13.1 Schedule 4.13.1 lists all of the Owned Intellectual Property that is: (a) subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, indicating for each, the applicable jurisdiction, title, registration number (or application number), and the date issued (or date filed) (the "Intellectual Property Registrations"); and (b) material to the operation of the Business as presently conducted or proposed to be conducted and not required to be disclosed pursuant to Section 4.13.1(a). All filings and fees related to Intellectual Property Registrations required to date have been timely filed with and paid to the relevant Governmental Authority and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. The original, first and joint inventors of the subject matter claimed in the patents and patent applications included in the Intellectual Property Registrations (the "Company Patents") are properly named in the Company Patents, and the applicable statutes governing marking of products covered by the inventions in the Company Patents have been fully complied with. Except as set forth in Schedule 4.13.1, no requests for non-publication have been filed for any of the pending Company Patents. The Owned Intellectual Property is subsisting, valid, and enforceable.

4.13.2 None of the Software included in the Owned Intellectual Property (the "Company Software") incorporates, embeds or is distributed or installed with, statically or dynamically links with or otherwise interacts with any Publicly Available Software or other elements that require any Company Software (or portions thereof) to be licensed or the source code to be divulged to any third Persons. No Publicly Available Software, including any version of any Software licensed pursuant to any GNU general public license or limited general public license, was or is used in, incorporated into, integrated or bundled with, or used in the development or compilation of the Company Software. The Company has not disclosed or delivered to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, the source code for any Company Software, other than to consultants and independent contractors in connection with their work for the Company pursuant to a Contract listed on Schedule 4.13.2. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) shall result in the disclosure or delivery of the source code for any Company Software by the Company or any escrow agent to any other Person. Schedule 4.13.2 identifies each contract pursuant to which the Company has deposited, or is or may be required to deposit, with an escrow agent or other Person, the source code for any Company Software.

4.13.3 Schedule 4.13.3 lists all Contracts by or through which other Persons grant the Company rights or interests in or to any Intellectual Property that is used in the conduct of the Business (the "Intellectual Property Licenses"); *provided*, that non-exclusive licenses to commercially available, unmodified, prepackaged, off-the-shelf third-party Software used by the Company solely for its own internal use with a replacement cost or aggregate fee, royalty, or other consideration for any such Software or group of related Software licenses of no more than $5,000 per unit or per year ("Off-the-Shelf Software") need not be listed on Schedule 4.13.3, but shall be included in the definition of Intellectual Property Licenses. The Company has provided Buyer with true and complete copies of all Intellectual Property Licenses. All Intellectual Property Licenses are in full force and effect and are the legal, valid, and binding obligations of the Company and, to the Knowledge of the Company, the other parties thereto in accordance with their terms. The Company is not and, to the Company's Knowledge, no other party thereto is in breach of or default under (or is alleged to be in breach of or default under) or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property License. The Transactions will not cause the termination or impairment of, or otherwise require the consent, approval or other authorization of or notification to any party to, any Intellectual Property License.

4.13.4 The Company exclusively owns all right, title and interest in and to, free and clear of Liens, or has the right to use pursuant to a valid and enforceable written Intellectual Property License, all of the Intellectual Property used in the operation of the Business, including the Owned Intellectual Property and the Intellectual Property licensed to the Company pursuant to the Intellectual Property Licenses (collectively, the "Company Intellectual Property"). Each item of the Company Intellectual Property will be owned and available for use by the Company immediately following the Closing on substantially identical terms and conditions as it was owned or available for use by the Company immediately prior to the Closing. The Company is in full compliance with all legal requirements applicable to the Company Intellectual Property and the ownership and use thereof. The Company Intellectual Property constitutes all of the Intellectual Property used in or necessary for the conduct of the Business. From and after the Closing, the Company will continue to own or possess all Intellectual Property, and all tangible forms thereof, necessary to conduct the business of the Company as currently conducted and proposed to be conducted as of the Closing Date.

4.13.5 Schedule 4.13.5 lists all Contracts pursuant to which the Company grants rights or authority to any Person with respect to any of the Company Intellectual Property. The Company has provided Buyer with true and complete copies of all such Contracts. Each such Contract is in full force and effect and is the legal, valid, and binding obligation of the Company and, to the Knowledge of the Company, the other parties thereto in accordance with its terms. The Company is not and, to the Company's Knowledge, no other party is in breach of or default under (or is alleged to be in breach of or default under) or has provided or received any notice of breach or default of or any intention to terminate, any such Contracts. The Transactions will not cause the termination or impairment of, or otherwise require the Consent of or notification to any party to, any such Contract.

4.13.6 Neither the use of the Company Intellectual Property, nor the conduct of the Business has, does, or, to the Company's Knowledge, will infringe(d), violate(d) or misappropriate(d) any Intellectual Property right of any Person. None of the Company Intellectual Property is subject to any outstanding Order and the Company has not received any communication, and no Proceeding has been instituted, settled or, to the Company's Knowledge, threatened that alleges any such infringement, violation, or misappropriation. To the Company's Knowledge, no Person is misappropriating, violating or infringing upon, or has misappropriated, violated or infringed upon at any time, any of the Company Intellectual Property or other right of the Company.

4.13.7 No employee or consultant of the Company has claimed rights to or any interests in or to any of the Company Intellectual Property. All employees, agents, consultants or contractors who have contributed to or participated in the creation or development of any of the Owned Intellectual Property either: (a) created such materials in the scope of his or her employment; (b) is a party to a "work-for-hire" agreement under which the Company is deemed to be the original owner/author of all rights, title, and interest therein; or (c) has executed an irrevocable assignment or an agreement to assign in favor of the Company of all right, title and interest in such material. The Company has taken all necessary and appropriate steps to protect the respective rights in confidential information and trade secrets used in connection with the conduct of the Business, including by requiring each employee, consultant, contractor and potential business partner or investor of the Business to execute confidentiality agreements materially and substantially consistent with the Company's standard forms thereof, true and complete copies of which have been provided to Buyer by the Company. Except under confidentiality obligations that comply with the immediately preceding sentence, there has been no material disclosure of any confidential information or trade secrets used in connection with the conduct of the Business.

4.14. Contracts and Commitments.

4.14.1 Schedule 4.14.1 sets forth a true, correct and complete list of the following Contracts to which the Company is currently a party (such Contracts, together with the Intellectual Property Licenses and the Contracts set forth on Schedule 4.13.5 and Schedule 4.25.1, collectively, the "Listed Contracts"):

(a) Contracts or groups of related Contracts with the same party which provide for expenditures, the purchase of goods or services, or otherwise involving an aggregate consideration, in each case, paid or payable to the Company, in excess of $10,000 during the twelve (12) months prior to the date hereof;

(b) Contracts or groups of related Contracts with the same party which provide for expenditures, the purchase of goods or services, or otherwise involving an aggregate consideration, in each case, paid or payable by the Company, in excess of $10,000 during the twelve (12) months prior to the date hereof;

(c) any Contract for capital expenditures or the acquisition or construction of fixed assets requiring aggregate future payments in excess of $10,000;

(d) any Contract for the sale of any assets, properties or rights of the Company, other than in the Ordinary Course of Business;

(e) Contracts relating to Indebtedness of the Company, or any guaranty by the Company of the Indebtedness or Liability of any other Person;

(f) Contracts not terminable by the Company upon sixty (60) days' or less notice without penalty;

(g) employment, consulting, termination, severance, retention, non- competition or change of control Contract or any other Contract respecting the terms and conditions of employment or payment of compensation with any employee, officer, independent contractor or consultant or Contracts relating to loans to officers, directors, employees or Affiliates, other than employee inventions and proprietary information and confidentiality agreements and contractor and consultant agreements in the form as provided to Buyer prior to the Agreement Date;

(h) Contracts pursuant to which the Company is a lessor or a lessee of any property, personal or real, or holds or operates any tangible personal property owned by another Person, except for any leases of personal property under which the aggregate annual rent or lease payments do not exceed $10,000;

(i) any collective bargaining agreement or any other Contract with any labor union, labor organization or other representative of employees;

(j) any Contracts relating to any Employee Benefit Plan;

(k) Contracts under which the Company has advanced or loaned any other Person an aggregate amount exceeding $10,000;

(l) Contracts regarding voting, transfer or other arrangements related to the equity or other securities of the Company or warrants, options or other rights to acquire any of the equity or other securities of the Company;

(m) Contracts containing any Restrictive Business Covenants;

(n) any Contract containing provisions that permit the counterparty to such Contract or agreement to terminate such Contract (or providing for the automatic termination thereof) as a result of the Transactions;

(o) any Contract that is a broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting or advertising Contracts;

(p) any Contract that relates to the acquisition or disposition of a business or Person, merger with a Person, or a division of a Person made since the date of the Company's incorporation;

(q) each written warranty, guaranty (including so-called "keepwell agreements") or other similar undertaking with respect to contractual performance extended by the Company other than in the Ordinary Course of Business;

(r) any Contract for any settlement agreement in respect of any Proceeding;

(s) any Government Contract or any outstanding bids for same made by the Company that, if accepted, would lead to a Government Contract;

(t) any Contract that governs any joint venture, partnership or similar arrangement involving a sharing of profits or otherwise; and

(u) any other Contract not required to be listed as a Listed Contract in response to the foregoing which could reasonably be determined to be material to the Business of the Company.

4.14.2 The Company has made available to Buyer true, correct and complete copies of all Listed Contracts (including all amendments, modifications or waivers thereto to date) and true, correct and complete descriptions of all material terms of any oral Contracts described therein. Except as specifically disclosed on Schedule 4.14.2, with respect to each of the Listed Contracts: (a) such Contract is in full force and effect and is the legal, valid and binding obligation of the Company that is a party to it and, to the Knowledge of the Company, of the other parties thereto enforceable against it, as applicable and, to the Knowledge of the Company, against the other parties thereto in accordance with its terms; (b) the Company is not in breach or default under any such Contract, and to the Knowledge of the Company, nor is any other party thereunder, and no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a breach or default by the Company or, to the Knowledge of the Company, any other party thereunder, give the Company or any other party thereunder the right to exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any such Listed Contract, or cause the creation of any Lien on any of the Company's assets; and (c) no party to any of such Contracts has given written notice or, to the Knowledge of the Company, oral notice of any dispute with respect to such Contract.

4.14.3 Except as set forth in Schedule 4.14.3, no other party to any Contract required to be listed in Schedule 4.14.1 has given written notice or, to the Knowledge of the Company, oral notice of its intention to cancel, terminate, fail to renew or seek the renegotiation of any such Contract or to decrease, limit or modify the goods or services purchased from, or provided to, the Company under any such Contract.

4.14.4 Schedule 4.14.4 identifies each Listed Contract that requires the Consent, or notice to the other party thereto to avoid any breach, default or violation of, acceleration, penalty or other material adverse consequence under, such Contract in connection with the Transactions.

4.15. Product Warranties; Services; Latent Defects.

4.15.1 Each product (including any software product) or service developed, manufactured, sold, licensed, leased, or delivered by the Company (each a "Company Product") conforms and has been in conformity in all material respects with the specifications for such Company Product, all applicable contractual commitments and all applicable express and implied warranties. The Company does not have any Liability (and to the Company's Knowledge, there is no basis for any present or future Proceeding against the Company giving rise to any Liability) for replacement or repair thereof or other damages in connection therewith, except Liabilities for replacement or repair incurred in the ordinary course of business consistent with prior practice.

4.15.2 All services provided by the Company to any third Person ("Services") were performed in conformity with the terms and requirements of all applicable express and implied warranties, all applicable services Contracts, and in all material respects with all applicable Laws. There is no claim pending or, to the Company's Knowledge, threatened against the Company relating to any Services or services Contract and, to the Company's Knowledge, there is no reasonable basis for the assertion of any such claim. The Company is not party to or otherwise bound by any "loss contract" or other Contract where the expected cost to complete the Contract exceeds either (a) the fees and payments to be received pursuant to such Contract or (b) the Company's budgeted expense with respect thereto.

4.16. Authorizations. Schedule 4.16 sets forth a true and correct list of all Authorizations held by the Company, or any of the employees of the Company for use in the operation of the Business. Except as set forth on Schedule 4.16, the Company holds all right, title and interest in and to all Authorizations which are material to the ownership, lease or operation of, or necessary for the Company to own, lease and operate, its assets and properties and the Business as heretofore conducted. All Authorizations set forth on Schedule 4.16 are in full force and effect, as of the date hereof, and the Company is not, as of the date hereof, in default (or with the giving of notice or lapse of time or both, would be in default) under any Authorizations. The Company has taken all necessary action to maintain each Authorization set forth on Schedule 4.16 and there are no Proceedings pending or, to the Knowledge of the Company, threatened, that seek the revocation, cancellation, suspension or adverse modification of any such Authorization. The consummation of the Transactions shall not contravene, conflict with, require any Consent or notice under or result in a violation or breach of the terms or requirements of any Authorizations held by the employees of the Company for use in the operation of the Business or require any Consent or other action by or notice to any Governmental Authority or other Person under any Authorizations held by the employees of the Company for use in the operation of the Business. Except as set forth on Schedule 4.16, all required filings with respect to the Company's Authorizations have been timely made and all required applications for renewal thereof have been timely filed. The services provided by the Company, and rendered by the Company's employees and service providers, have been provided and rendered materially in accordance with the specifications and guidelines required by any Authorizations set forth on Schedule 4.16.

4.17. Insurance. Schedule 4.17 sets forth all insurance policies (including business interruption insurance) and fidelity bonds covering the assets, business, equipment, properties, operations, and employees and other personnel of the Company, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies. There is no claim by the Company pending under any of such policies or bonds as to which coverage has been questioned, denied, or disputed or that the Company has a reason to believe will be denied or disputed by the underwriters of such policies or bonds. There is no pending claim under such insurance policies that would reasonably be expected to exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, will be paid if incurred prior to the Closing) and the Company is otherwise in material compliance with the terms of such policies and bonds. To the Company's Knowledge, there is no threatened termination of, or premium increase with respect to, any of such policies. The Company has never maintained, established, sponsored, participated in, or contributed to any self-insurance plan or program. Each director and officer of the Company is insured under the directors' and officers' liability insurance coverage presently maintained by the Company.

4.18. Litigation.

4.18.1 Other than as set forth on Schedule 4.18.1, there is no (a) outstanding Order or any other judgment of any kind whatsoever of any Governmental Authority against any Securityholder, the Company, the Business or any of its properties or assets, or (b) pending Proceeding of any kind or nature whatsoever or any formal demand which might lead to any Proceeding, or to the Company's Knowledge, threatened, against any Securityholder, the Company (including the Company's assets or properties) or the Business, and the Securityholders have no Knowledge of any basis for any of the foregoing. True, correct and complete copies of all complaints, pleadings, petitions, notices, motions and other papers filed in connection with the Proceedings set forth on Schedule 4.18.1 and all pertinent correspondence and other legal documents pertaining to each matter set forth on Schedule 4.18.1 have been delivered to Buyer. Except as set forth specifically set forth on Schedule 4.18.1, there are no Proceedings pending or, to the Company's Knowledge, threatened, against any Securityholder, the Company or the Business which would give rise to any right of indemnification on the part of any officer, manager, employee or agent of the Company or heirs, executors or administrators thereof against the Company or any successors.

4.18.2 Schedule 4.18.2 sets forth each Proceeding against the Company or the Business for the prior three (3) years that has since been fully adjudicated, settled, resolved or is otherwise no longer pending as of the Closing Date.

4.19. Employees and Independent Contractors.

4.19.1 Schedule 4.19.1 sets forth an accurate and complete list as of the date hereof of all of the employees of the Business (including any such person who is on a leave of absence, on layoff status or on short-term or long-term disability) and (a) their titles or responsibilities; (b) their dates of hire; (c) their locations of employment; (d) their current salaries or wages and all bonuses, commissions and incentives paid at any time during the past twelve (12) months or payable to them; (e) whether they are classified as exempt or nonexempt from overtime pay; (f) any specific bonus, commission or incentive plans or agreements for or with them; (g) each Company Employee Benefit Plan in which they participate; (h) any paid time off (including sick, vacation, and personal time) that is accrued but unused; (j) any outstanding loans or advances made to them; and (i) for any non-U.S. citizen employee, visa and/or green card status and expiration date of the same.

4.19.2 Schedule 4.19.2 sets forth an accurate and complete list as of the date hereof of all consultants, independent contractors, outside sales representatives and contract workers employed by temporary hiring agencies (collectively, "Independent Contractors") engaged by the Company and describes (a) the dates of engagement, terms of engagement, and payment arrangements, and (b) their jobs or projects currently in progress. No Independent Contractor has any basis to claim status as an employee of the Company. The Company has not incurred, and no facts or circumstances exist under which the Company likely would incur, any material Liability arising from the misclassification of employees as independent consultants or contractors. The Company has accurately reported the compensation of each Independent Contractor on IRS Form 1099 or other applicable Tax forms for Independent Contractors when required to do so.

4.19.3 Except as set forth on Schedule 4.19.3, no employee of the Business has an employment Contract. Except as limited by the specific and express written terms of any employment Contracts set forth on Schedule 4.19.3 and except for any limitations of general application which may be imposed under applicable employment Laws, the Company has the right to terminate the employment of each of its employees at will and to terminate the engagement of any of its Independent Contractors without payment (whether for compensation or benefits) to such employee or Independent Contractor other than for services rendered through termination and without incurring any penalty or Liability.

4.19.4 No Proceeding is pending or, to the Knowledge of the Company, is threatened against the Company by or on behalf of any past or present employee of the Business or applicant for such employment, or any past or present Independent Contractor, or any Governmental Authority. There is no violation of any Contract between the Company, on one hand, and any employee of the Business or any Independent Contractor, on the other hand. The Company has withheld and paid to (or is holding for payment not yet due) the appropriate Governmental Authority all amounts required by Law or agreement to be withheld from the wages or salaries due to each of its employees. The Company has paid in full to all of its employees and Independent Contractors all wages, salaries, bonuses, benefits, commissions and other compensation or remuneration due and payable to them or otherwise arising under any Law, plan, policy, practice, program or agreement and has not unlawfully withheld any such wages, salaries, bonuses, benefits, commissions or other compensation. All amounts that the Company is required, by Contract, Law or otherwise, to deduct from its employees' salaries or to transfer to such employees' pension or provident, life insurance, incapacity insurance, continuing education fund or otherwise, have been duly paid into the appropriate fund or funds, and the Company has no outstanding obligation or Liability to make any such transfer or provision. There are no outstanding Orders or settlements to which the Company is a party or which otherwise binds the Company with respect to any Liability related to its employees or former employees, its Independent Contractors or former Independent Contractors, or the Business of it.

4.19.5 The Company is in compliance in all material respects with all applicable federal, state and local Laws relating to employment, including those Laws governing employment practices, the terms and conditions of employment, compensation, payment of wages, health and safety, workers' compensation, labor relations and plant closings, including the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Fair Labor Standards Act, the National Labor Relations Act, the Occupational Safety and Health Act, and Title VII of the Civil Rights Act of 1964, the Family Medical Leave Act, all as amended where applicable. The Company is in compliance with its obligations pursuant to the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state or local Law, in respect of the Business. The Company has not had any group layoffs of employees within ninety (90) calendar days prior to the Closing Date.

4.19.6 All current employees of the Company are, and all former employees whose employment was terminated, voluntarily or involuntarily, within the three years prior to the date of this Agreement, were legally authorized to work in the United States. The Company has completed and retained the necessary employment verification paperwork under the Immigration Reform and Control Act of 1986 ("IRCA"), to the extent required, for the employees hired prior to the date of this Agreement, and has complied with the applicable anti-discrimination provisions of the IRCA. Further, at all times prior to the date of this Agreement, the Company was in material compliance with both the applicable employment verification provisions (including the paperwork and documentation requirements) and the applicable anti- discrimination provisions of IRCA.

4.19.7 Except as set forth on Schedule 4.19.7: (a) the Company is not subject to any strike, picketing, work slowdown, work stoppage or lockout or, to the Knowledge of the Company, any threats thereof, nor has there been any such activity within the past three years; (b) the Company is not a party to, or has material Liability with respect to, and is otherwise bound by, any collective bargaining agreement or any other type of Contract with any labor organization or other representative of any of their respective employees, and no such collective bargaining agreement or other Contract is currently being negotiated by or on behalf of the Company or any of the Company's employees, nor is any employee of the Company represented by a union or labor organization or subject to a collective bargaining agreement; (c) no organizational attempt has ever been made on behalf of any union or collective bargaining unit with respect to the employees of the Company; and (d) there is no unfair labor practice, labor dispute (other than routine individual grievances), demand or Proceeding pending or, to the Knowledge of the Company, threatened, involving, on one hand, any employee of the Business, on the other hand, the Company.

4.19.8 To the Knowledge of Company, no current employee of the Company is a party to or is bound by any confidentiality agreement, non-competition agreement, non-solicitation agreement or other Contract (with any Person) that may have an adverse effect on the performance by such employee of any of his duties or responsibilities as an employee of the Business. No current employee of the Company has terminated, or, to the Knowledge of Company, has indicated an intention to terminate, his or her employment within six months prior to the date hereof.

4.19.9 The Company has at all times maintained proper workers' compensation insurance coverage for all of its employees and has provided Buyer with copies of all such current policies and a listing of any claims. The Company has at all times utilized proper risk classification codes and descriptions in accordance with all applicable workers' compensation Laws. Except as set forth on Schedule 4.19.9, there have been no losses due to claims made under the Company's workers' compensation insurance policies.

4.19.10 Except as set forth on Schedule 4.19.10, no employee of the Company has terminated, or, to the Knowledge of the Company, has indicated an intention to terminate, his or her employment within six (6) months prior to the date hereof.

4.19.11 To the Knowledge of the Company, in the last six (6) years, (i) no allegations of sexual harassment have been made against any director or officer of the Company, and (ii) the Company has not entered into any settlement agreements related to allegations of sexual harassment or misconduct by an officer of the Company. Except as set forth on Schedule 4.19.11, the Company is not a party to a settlement agreement with a current or former director, officer, employee or independent contractor resolving allegations of sexual harassment by such director, officer, employee or independent contractor.

4.20. Employee Benefits.

4.20.1 Schedule 4.20.1 sets forth a true, correct and complete list and description of (a) all of the Employee Benefit Plans which the Company, or any ERISA Affiliate, sponsors, maintains or contributes to, is required to contribute to, or has or could reasonably be expected to have any current or contingent Liability (referred to collectively as the "Company Employee Benefit Plans" and individually as a "Company Employee Benefit Plan"), (b) all employees, officers, consultants, Independent Contractors and directors affected or covered by a Company Employee Benefit Plan, and (c) all ERISA Affiliates. A true, correct and complete copy of each Company Employee Benefit Plan (or, with respect to any Company Employee Benefit Plan that is not set forth in writing, a written description of such plan) has been provided to Buyer. Copies of the following with respect to each Company Employee Benefit Plan, to the extent applicable, have also been provided to Buyer: (i) the most recent determination letter issued by the IRS, or, if such plan is a prototype, the IRS opinion or advisory letter on which the Company may rely, (ii) all pending applications for rulings, determination letters, opinions, no action letters and similar documents filed with any governmental agency (including the Department of Labor and the IRS), (iii) the three most recent Annual Reports (Form 5500 series), accompanying schedules and any other form or filing required to be submitted to any Governmental Authority, and the most current actuarial report for each such plan, and (iv) all summary plan descriptions, summaries of material modifications, service agreements, stop loss insurance policies, and all related Contracts, all compliance reports and testing results for the past three years, all closing letters, audit finding letters, revenue agent findings and similar documents, if any.

4.20.2 Neither the Company nor any ERISA Affiliate thereof has ever sponsored, maintained, established, participated in, contributed to, been required to contribute to, and neither the Company nor any ERISA Affiliate has any current or contingent Liability with respect to, any of the following: (a) any plan subject to Section 302, 303 or 304 of ERISA, Title IV of ERISA, or Sections 412, 430, 431 or 432 of the Code; (b) any "multiemployer pension plan" as such term is defined in Section 3(37) of ERISA; (c) any multiple employer plan as described in Section 413(c) of the Code; (d) any welfare plan funded by a "voluntary employee beneficiary association" as such term is defined in Section 501(c)(9) of the Code; (e) any "multiple employer welfare arrangement" as such term is defined in Section 3(40) of ERISA; or (f) any plan providing a self-insured welfare benefit. No leased employees (as defined in Section 414(n) of the Code) or Independent Contractors are eligible for, or participate in, any Company Employee Benefit Plans. None of the Company Employee Benefit Plans promises or provides health, life or other welfare benefits to retirees or former employees, or severance benefits, except as required by Code Section 4980B, Sections 601 through 609 of ERISA, or comparable state Laws which provide for continuing health care coverage.

4.20.3 Except with respect to the Employee Benefit Plans set forth on Schedule 4.20.1, neither the Company nor any ERISA Affiliate thereof has (a) established, sponsored, maintained or contributed to (or has or had the obligation to contribute to) any Employee Benefit Plan, (b) proposed any Employee Benefit Plan which it plans to establish, sponsor, maintain or to which it will be required to contribute, or (c) proposed any changes to any of the Company Employee Benefit Plans now in effect.

4.20.4 All of the Company Employee Benefit Plans are, and have been, operated in compliance with their provisions and with all applicable Laws including ERISA and the Code and the regulations and rulings thereunder. With respect to each of the Company Employee Benefit Plans that is intended to be qualified under Section 401(a) of the Code, each such plan has been determined by the IRS to be so qualified as to form, each trust forming a part thereof has been determined by the IRS to be exempt from Tax pursuant to Section 501(a) of the Code, and no circumstances exist that would cause such qualified status to be revoked for any period. Each Company Employee Benefit Plan which is a group health plan (within the meaning of Section 5000(b)(1) of the Code) has been maintained and operated in all material respects in compliance with the requirements of Section 4980B of the Code and Part 6 of Subtitle B of ERISA. The Company, its ERISA Affiliates, and all fiduciaries of the Company Employee Benefit Plans have complied with the provisions of the Company Employee Benefit Plans and with all applicable Laws including ERISA and the Code and the regulations and rulings thereunder. No non-exempt prohibited transaction under Section 406 or 407 of ERISA or Section 4975 of the Code has occurred with respect to any of Company Employee Benefit Plans. Neither the Company nor any ERISA Affiliate thereof has incurred, nor will incur, any Tax Liability or civil penalty, damages, or other Liabilities arising under Section 502 of ERISA, resulting from any of the Company Employee Benefit Plans, with respect to any matter arising on or before the Closing Date.

4.20.5 Except as set forth on Schedule 4.20.5, neither the execution and delivery of this Agreement or any other Transaction Documents nor the consummation of the Transactions, alone or in connection with another event, will (a) entitle any current or former employee or independent contractor of the Company to severance pay or any other payment or benefit; (b) accelerate the time of payment or vesting of, or increase the amount of, any compensation or benefit due to any employee or independent contractor of the Company; (c) directly or indirectly cause the Company to transfer or set aside any assets to fund any benefits under any Company Employee Benefit Plan; or (d) otherwise give rise to any material Liability under any Company Employee Benefit Plan. Neither the execution and delivery of this Agreement or any other Transaction Documents nor the consummation of the Transactions will result in any payment or benefit to any employee or independent contractor of the Company under any Company Employee Benefit Plan or otherwise that would not be deductible by reason of Section 280G of the Code or would be subject to an excise tax under Section 4999 of the Code. The Company is not obligated to make any "gross-up" payment with respect to, nor does it have any indemnity obligation for, any Taxes or penalties imposed under Sections 4999 or 409A of the Code.

4.20.6 The Company (a) has complied, in all material respects, with the requirements of the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, and the regulations and related guidance promulgated thereunder, (b) has no, and has had no, Liability for a penalty or assessable payment under Section 4980H of the Code and does not reasonably expect to, have any Liability for such a penalty or assessable payment, (c) has timely and accurately filed and distributed Forms 1094-C and 1095-C in accordance with the requirements of Sections 6055 and 6056 of the Code and the regulations and related guidance promulgated thereunder, and (d) for each month through the date hereof, has properly identified each employee who is a "full-time employee", as defined in Section 4980H of the Code and the regulations and related guidance promulgated thereto.

4.20.7 With respect to the Company Employee Benefit Plans, the Company and each ERISA Affiliate thereof will have timely made, on or before the Closing Date, all payments (including premium payments with respect to insurance policies) required to be made by them on or before the Closing Date and will have accrued (in accordance with GAAP) as of the Closing Date all payments (including premium payments with respect to insurance policies) due but not yet payable as of the Closing Date. All reports, disclosures, notices, and filings with respect to each Company Employee Benefit Plan required to be made to employees, participants, beneficiaries, alternate payees and any Governmental Authority have been timely made or an extension has been timely obtained.

4.20.8 There are no Proceedings that have been asserted, instituted or threatened against any of the Company Employee Benefit Plans, the assets of any of the trusts under such plans, the plan sponsor, the plan administrator or any fiduciary of any such plan (other than routine benefit claims), and there are no facts which could form the basis for any such Proceeding.

4.20.9 The Company and the ERISA Affiliates thereof can terminate each of the Company Employee Benefit Plans upon not more than thirty (30) days' notice without further Liability to the Company or its ERISA Affiliates. No action or omission of the Company, or any ERISA Affiliate, or any manager, director, officer, or agent thereof in any way restricts, impairs or prohibits the Company or any ERISA Affiliate, or any successor, from amending, merging, or terminating any of the Company Employee Benefit Plans in accordance with the express terms of any such plan and applicable Law. Except as set forth on Schedule 4.20.9, no event has occurred nor will occur which will result in the Company having any Liability in connection with any Employee Benefit Plan of any ERISA Affiliate.

4.20.10 Each Company Employee Benefit Plan, or portion thereof, that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code) has been administered in compliance with its terms and the documentary and operational requirements of Section 409A of the Code and the rules and regulations issued thereunder.

4.21. Environment, Health and Safety Matters.

4.21.1 Except as set forth on Schedule 4.21.1, the Company has complied, and is in compliance, with all applicable Environmental Laws.

4.21.2 Without limiting the generality of the foregoing, except as set forth on Schedule 4.21.2, the Company has obtained, has complied, and is in compliance with, all Authorizations and approvals required under applicable Environmental Law for the operation of the Business, and all such Authorizations and approvals are in full force and effect.

4.21.3 Except as set forth on Schedule 4.21.3, the Company has not received written notice, report or other correspondence or documents regarding any actual or alleged violation of Environmental Laws from any Governmental Authority or any other Person, or any Liabilities or potential Liabilities arising under or related to Environmental Laws, including Liabilities arising in connection with employee safety, personal injury, damage to real property, natural resource damage and response costs.

4.21.4 Except as set forth on Schedule 4.21.4, there are no claims arising under or related to applicable Environmental Laws ("Environmental Claims") pending or threatened against the Company, the Business or against any Person whose Liability for any Environmental Claim has been retained, assumed or guaranteed by the Company or any real property which the Company owns, leases, operates or of which it has custody in whole or part. The Company has treated, stored, disposed of, arranged for or permitted the disposal of, transported, handled, or released any Hazardous Materials, or owned or operated any property or facility in a manner that has given or would give rise to any Environmental Claims, including any Liability for employee safety, response costs, personal injury, property damage, natural resources damages or attorney fees, pursuant to Environmental Laws. Neither this Agreement nor the consummation of the Transactions will result in any Liabilities for site investigation or cleanup, or notification to or Consent of Governmental Authority or third parties, pursuant to any of the so-called transaction-triggered or responsible property transfer Environmental Laws.

4.21.5 The Company has provided all material documents, reports and correspondence, including consent orders and decrees, settlement agreements, notices of violations, and Authorizations, related in any way, to matters arising under or pertaining to Environmental Laws.

4.22. Export Control Matters; Trade Regulations. No Governmental Authority has communicated with the Company in a manner indicating that the Company is required to register, obtain Authorizations, or take other actions pursuant to the Trade Regulations in connection with or as a result of work performed by the Company or other Persons under the direction or supervision of the Company. The Company has not registered, obtained any Authorizations, or taken any other actions pursuant to the Trade Regulations. The operations of the Business are, and have at all times been, in compliance with all applicable Trade Regulations and the operations of the Business are, and have at all times been, in compliance with all applicable foreign Laws relating to the import or export of goods, technology, or services or trading embargoes or restrictions. Consummation of the Transactions will not require re-transfer or other Authorizations to be issued under any such Laws.

4.23. Customers and Suppliers.

4.23.1 Schedule 4.23.1 sets forth the top ten (10) largest customers of the Business as measured by gross revenue for the fiscal year ended December 31, 2022 and the 8-month period ended August 31, 2023. Except as set forth on Schedule 4.23.1, no single customer has provided more than 10% of the gross revenue of the Business in any of the Company's last three (3) fiscal years. No customer of the Business has provided written notice of cancellation or other termination or, to the Company's Knowledge, threatened in writing to cancel or otherwise terminate or, to the Company's Knowledge, intends to cancel or otherwise adversely modify in any material respect, its relationship with the Business or has during the last twelve (12) months decreased materially, or, to the Company's Knowledge, threatened to decrease or limit its usage of the services or products of the Business, in each case whether as a result of the Transactions or otherwise. Except as set forth on Schedule 4.23.1, no customer of the Business has demanded in writing or otherwise requested in writing a refund of any amounts paid to the Company by such customer.

4.23.2 Schedule 4.23.2 sets forth the top ten (10) largest suppliers of the Business as measured by purchases for the fiscal year ended December 31, 2022 and the 8-month period ended August 31, 2023. The Business has no sole source suppliers. No supplier of the Business has provided written notice of cancellation or other termination, or, to the Company's Knowledge, threatened in writing to cancel or otherwise terminate or, to the Company's Knowledge, intends to cancel or otherwise adversely modify in any material respect, its relationship with the Business or has during the last twelve (12) months decreased materially, or, to the Company's Knowledge, threatened to decrease or limit materially, its services, supplies or materials to the Business, in each case whether as a result of the Transactions or otherwise.

4.24. Related Party Transactions. Except as set forth on Schedule 4.24 and for employment agreements with any employee of the Company otherwise disclosed on another Schedule attached hereto, no Securityholder, director, manager, officer or employee of the Company or any Affiliate thereof, (a) is a party to any agreement, Contract, commitment or transaction with the Company or any of its directors, officers, employees or Affiliates, or has any interest in any property or assets used by the Company, or (b) is the direct or indirect owner of an interest in any Person that is a competitor, supplier or customer of the Company. Except as set forth and described on Schedule 4.24, none of the assets or properties, tangible or intangible, that are used by the Company are owned by any Securityholder or their respective Affiliates (other than the Company).

4.25. Data Protection, Privacy Compliance, and Information Technology.

4.25.1 All IT Assets are either owned by, or leased or licensed to, the Company. The IT Assets have the capacity and performance necessary to fulfill the requirements that they currently perform. All of the IT Assets owned or purported to be owned by the Company are held by the Company as the sole, legal and beneficial owner and are held free of all Liens or any other similar third-party rights or interests. The IT Assets have the capacity and performance necessary to fulfill the requirements that they currently perform. There has been no failure or other substandard performance of any of the IT Assets which has caused any disruption to the Business. The Company has taken all necessary and appropriate steps to provide for the back-up and recovery of the IT Assets used in the conduct of the Business, including material data, and the Company has written, implemented, maintained, adhered to, and complied with appropriate written disaster recovery plans, procedures, and facilities. The Company has purchased a sufficient number of licenses, seats and rights for all third-party Software used in the Business. No Person providing services to the Company has failed to meet any service obligations, and there have been no failures, breakdowns, outages, bugs or continued substandard performance of or other adverse events affecting any IT Assets (as a whole or with respect to any portion thereof) which have caused the substantial disruption or interruption in or to the use of the IT Assets (as a whole or with respect to any portion thereof) or the operation of the Business. The Company has taken necessary and appropriate precautions to ensure that all IT Assets are fully functional and operate and run continued, uninterrupted and error-free in a reasonable and efficient business manner in all material respects. The Company has, in a timely manner, implemented all security patches, upgrades and updates that are generally available for the IT Assets.

4.25.2 All of the IT Assets, including the Company Software, do not contains any undocumented "back door," "drop dead device," "time bomb," "Trojan horse," "virus," or "worm" (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (a) 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 (b) damaging or destroying any data or file without the user's consent.

4.25.3 Schedule 4.25.3 lists all Contracts by or through which another Person or other Persons: (a) grant the Company rights or interests in or to any of the IT Assets; (b) receive access to the IT Assets used in the Business, the information and data stored therein, or any encryption keys, methods, standards, or algorithms of the Company, indicating for each the location, by country, where that Person accesses or those Persons access such IT Assets, information, or data; or (c) operate, manage, or otherwise provide hosting or other data center services to the Company, indicating for each the location where those hosting or other data center services are provided. The Company has provided Buyer with true and complete copies of all such Contracts. All such Contracts are valid, binding and enforceable between the Company and the other parties thereto. The Company is not and, to the Knowledge of the Company, no other party thereto is in breach of or default under (or is alleged to be in breach of or default under) or has provided or received any notice of breach or default of or any intention to terminate, any such Contracts.

4.25.4 The Company's receipt, collection, monitoring, maintenance, creation, transmission, use, analysis, disclosure, storage, disposal, security, and other processing ("Processing") of Personal or Protected Information has complied, and complies, with (a) any Contracts to which it is a party, (b) all Data Protection Requirements, (c) all Consents that relate to the Company's Processing of Personal or Protected Information, and (d) all applicable internal and external privacy policies and notices adopted by the Company or otherwise utilized in the Business. The Company has obtained all necessary Consents and provided all necessary notices to Process the Personal or Protected Information in the Company's possession or under its control as such Personal or Protected Information has been and is Processed in connection with the operation of the Company. The Company has posted, in accordance with Data Protection Requirements, privacy policies and notices governing its use of Personal or Protected Information on its websites and mobile applications, and the Company has complied at all times with such privacy policies and notices and all former published privacy policies and notices.

4.25.5 Employees of the Company who have access to Personal or Protected Information have received documented training (in accordance with best industry standards) with respect to compliance with all Data Protection Requirements. The Company has adopted written policies and procedures that apply to the Company with respect to privacy, data protection, security, and Processing of Personal or Protected Information gathered, received, created, or accessed in the course of the operations of the Company, and those policies and procedures are reasonable and comply with all Data Protection Requirements. Where required to do so pursuant to any of the terms of use, terms of service or privacy, data security or data protection policy of any customer, partner, or Third-Party Platform, in each case, to the extent binding upon the Company, the Company has at all times required, via written Contracts, that other customers, other partners, and Company employees (if and to the extent applicable) comply with all applicable privacy, data security and data protection policies, terms of use and terms of service of such customer, partner or Third-Party Platform. The Company has protected the confidentiality, integrity, and security of their Personal or Protected Information and IT Assets against any unauthorized control, use, access, interruption, modification, or corruption in conformance with Data Protection Requirements. The Company is not currently using or has ever used the Credentials of any other Person to use or access any Third-Party Platform.

4.25.6 There has been no breach of the security of any IT Asset, or unauthorized access, use, acquisition, loss, corruption, or disclosure of any Personal or Protected Information, owned, used, stored, received, or controlled by or on behalf any of the Company (each, a "Security Incident"), including any Security Incident that would constitute a breach for which notification to individuals and/or Governmental Authorities is required under any Data Protection Requirement. The Company has identified, documented, investigated, contained, and eradicated each Security Incident.

4.25.7 Except with respect to health information provided by or about Company employees and their beneficiaries, the Company has not Processed and does not currently Process any information that is subject to HIPAA or any state health information Laws. The Company has never been or agreed that it is a "Business Associate" (as such term is defined in HIPAA).

4.25.8 Any information that the Company purports to be de-identified meets the applicable standards for de-identification or where applicable, anonymization, required by any Data Protection Requirement. Where the Company relies on a certification from a third-party expert as to the de-identification of any Personal or Protected Information or other compiled information Processed by the Company, the expert utilized meets or exceeds any expertise required by any Data Protection Requirement and the Company is and has been in compliance with any such certification, as amended from time to time, with respect to such de-identification certification and associated Processing. The Company's receipt, collection, monitoring, maintenance, creation, transmission, use, analysis, disclosure, storage, disposal, security, and other Processing of de-identified information received from any supplier has complied, and complies, with any Contracts to which it is a party.

4.25.9 There are no Orders or Proceedings pending or, to the Knowledge of the Company, threatened against the Company or its "workforce" (as defined under HIPAA) by any person or by or before any Governmental Authority for: (a) a violation of any Data Protection Requirements; (b) any alleged Security Incident; (c) any alleged violation of any Person's privacy rights, personal information rights, or data rights; and/or (d) the Company's Processing of Personal or Protected Information.

4.25.10 The Company has implemented, and is in compliance with, all physical, technical and other measures meeting the highest industry standards applicable to the industry in which they operate (but no less than reasonable standards) to assure the confidentiality, integrity and security of the IT Assets, the transactions executed thereby, and all Personal or Protected Information, including from any theft, corruption, loss or unauthorized use, access, interruption or modification thereof by any Person. The Company has performed a security risk assessment no less frequently than annually, which at a minimum meets the requirements of any applicable Data Protection Requirement and the Company has addressed and fully remediated all threats and deficiencies identified in each such security risk assessment. Except as set forth and described on Schedule 4.25.10, (i) the Company does not have and has not had any on-site data storage or data storage centers; (ii) the Company does not maintain and has not maintained any storage of any data or other information outside of the United States; and (iii) no Person outside of the United States has access to or has accessed the IT Assets used in the Business, the information and data stored therein, or any encryption keys, methods, standards, or algorithms of the Company. The Company does not collect, use, or disseminate Personal or Protected Information regarding residents of countries outside the United States.

4.25.11 The consummation of the transactions contemplated by this Agreement will not result in the violation of any applicable Data Protection Requirement.

4.26. Illegal Payments. Neither the Company, nor to the Knowledge of the Company, any of its directors, officers, employees, representative or agents has: (a) directly or indirectly given or agreed to give any illegal gift, contribution, payment or similar benefit to any supplier, customer, governmental official or employee or other Person to assist in connection with any actual or proposed transaction; (b) made or agreed to make any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local or foreign public office, which violates any applicable Law, including the Foreign Corrupt Practices Act of 1977, as amended, or might subject Buyer or the Company to any damages or penalties in any civil, criminal or governmental Proceeding, or the non-continuation of which has had or may reasonably be likely to have a Material Adverse Effect; or (c) established or maintained any unrecorded fund or asset or made any false entries on any books or records for any purpose.

4.27. COVID-19; CARES Act; Relief Funds.

4.27.1 Except as set forth on Schedule 4.27, the Company did not receive any loan in connection with the CARES Act or PPPFA. Except as set forth on Schedule 4.27, no funds have been received or requested by the Company under any foreign, federal, state or local grant, loan or other funding programs established as a result of the COVID-19 outbreak. At the time of application, the Company met all eligibility requirements for receiving any funds received under any such COVID-19 related programs and all information (and all certifications, representations and warranties made therein) submitted in connection with any such application was true and accurate in all respects. The Company is not currently the subject of an audit, investigation or other inquiry by any Governmental Authority with respect to its application for, or receipt of, any such funds.

4.27.2 The Company has complied and is in compliance, in all material respects, with all applicable Laws regarding the COVID-19 pandemic, including without limitation the Families First Coronavirus Response Act, the CARES Act, and any and all applicable shelter in place, stay at home, or similar Orders.

4.28. Full Disclosure. No representation, warranty or other statement by the Company or Securityholders in this Agreement, the Schedules hereto or the other Transaction Documents or in connection with the execution and delivery thereof or the consummation of the Transactions, contains any untrue statement of material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. There is no fact that has specific application to any Securityholder, the Company or the Business that may have a Material Adverse Effect that has not been set forth in this Agreement or the Schedules hereto.

4.29. Disclaimer of Other Representations and Warranties.

4.29.1 Neither Company, Securityholders, not any of their Affiliates, representatives, employees, directors, officers, or direct or indirect equity holders has made, and shall not be deemed to have made, any representations or warranties, express or implied, of any nature whatsoever related to Company or the Business, other than those representations and warranties expressly set forth in Section 3 or 4 (in each case qualified by the related disclosure schedules) and any certificate, agreement, or other documents delivered pursuant to Section 3 or 4 of this Agreement.

4.29.2 Without limiting the generality of the foregoing, except for the representations and warranties contained in Section 3 or 4 (in each case qualified by the related portions of the disclosure schedules), or any certificate, agreement, or other document delivered pursuant to Section 3 or 4 of this Agreement), neither Company, Securityholders, nor or any other Person (including, without limitation, any representative, employee, officer, or director of Company) has made, and shall not be deemed to have made, any express or implied representation or warranty, either written or oral, in the materials relating to the business of Company made available to the Buyer, and, except as set forth in Section 3 or 4 (in each case qualified by the related portions of the disclosure schedules) or any certificate, agreement, or other document delivered pursuant to Section 3 or 4 of this Agreement), no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise or deemed to be relied upon by the Buyer in executing, delivering and performing this Agreement and the other transactions contemplated hereby.

5. Representations and Warranties of Buyer. As a material inducement to the Securityholders to enter into the Transaction Documents and to consummate the Transactions, Buyer hereby represents and warrants to the Securityholders (as of the date hereof and as of Closing, except in each case to the extent any representation and warranty speaks as of any other specific date) as set forth below:

5.1. Organization of Buyer. Buyer is a corporation duly organized, validly existing, and in good standing under the Laws of the State of Nevada, and it has the corporate power and authority to own or lease its properties and to conduct its business as it is now being conducted. Merger Sub will, at the Closing, be a corporation duly formed, validly existing, and in good standing under the Laws of the State of Nevada, and it will have the corporate power and authority to own or lease its properties and to conduct its business as is being conducted as of the Closing Date. Buyer is, and Merger Sub will at the Closing be, duly qualified and is in good standing (or equivalent status) in each jurisdiction in which the property leased or operated by such party or the nature of the business conducted by such party makes such qualification necessary.

5.2. Authorization of Transaction. Buyer has full power and authority to sign, deliver, and perform, in accordance with their terms, this Agreement and any other Transaction Documents to which such party is a party and to consummate the Transactions. This Agreement and each other Transaction Document has been duly and validly executed and delivered by each Party that is a party to such Transaction Document. Assuming this Agreement and the other Transaction Documents to which Buyer and Merger Sub, as applicable, is a party are duly and validly executed and delivered by the other parties hereto and thereto, this Agreement and each other Transaction Document to which Buyer and Merger Sub, as applicable, are a party are the valid and legally binding obligations of such party, enforceable against such party, in accordance with their respective terms.

5.3. Noncontravention. Neither the execution and the delivery of this Agreement and any other Transaction Documents to which Buyer and Merger Sub is a party, nor the consummation of the Transactions, will (a) violate any provision of its organizational documents or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, Contract, lease, Authorization, instrument, or other arrangement to which Buyer or Merger Sub is a party or by which such party is bound or to which any of such party's assets is subject (or result in the imposition of any Lien upon any of such party's assets).

5.4. Broker Fees. Buyer has no, and Merger Sub shall at the Closing have no, liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the Transactions for which Securityholders could become liable or obligated.

5.5. R&W Policy. On or prior to the date hereof, Buyer has bound a representations and warranties insurance policy (the "R&W Policy"). The R&W Policy provides, subject to the exclusions therein, coverage for breaches of the representations and warranties set forth in Section 3 and Section 4, and specifies that the insurer for the R&W Policy has no right of subrogation against the Company or Securityholders (except in the event of fraud or intentional misrepresentation).

5.6. Financial Capability; Solvency. Buyer has access to, and will have access as of the Closing Date to, sufficient funds on hand (including, for these purposes, cash on hand, available lines of credit, and other sources of immediately available funds) to consummate the Transaction. Immediately after giving effect to the transactions contemplated hereby, Buyer and its subsidiaries (including, without limitation, the Surviving Corporation) will be Solvent.

5.7. Litigation. There are no Proceedings pending that relate to this Agreement or the transactions contemplated hereby or, to the knowledge of the Buyer, threatened, against or affecting the Buyer or any of its Affiliates that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of, or seek other material equitable relief with respect to, the transactions contemplated by this Agreement or that would reasonably be expected to impair or delay the Buyer's ability to consummate the transactions contemplated by this Agreement.

5.8. Investment Intent.

5.8.1 Buyer is acquiring the Shares for investment for its own account. Buyer acknowledges that the Shares and the sale thereof have not been registered under the Laws of any jurisdiction.

5.8.2 The Shares are being acquired by Buyer hereunder solely for Buyer's own account, for investment purposes only, and with no present intention of distributing, selling, or otherwise disposing of them in violation of the Securities Act of 1933, as amended, or any other securities law.

5.8.3 Buyer has such knowledge and experience in financial and business matters that Buyer is capable of evaluating the merits and risks of the proposed investment in the Shares.

5.8.4 Buyer understands that the Shares may not be sold, transferred, or otherwise disposed of by it without registration under the Securities Act of 1933, as amended, and any applicable securities laws, or an exemption therefrom, and that in the absence of an effective registration statement covering such Shares or an available exemption from registration, such Shares may be required to be held indefinitely.

5.9. SEC Filings. Buyer has timely filed with or furnished to, as applicable, the Securities and Exchange Commission ("SEC") all 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 January 1, 2020 (the "Buyer SEC Documents"). True, correct, and complete copies of all the Buyer SEC Documents are publicly available on the Electronic Data Gathering, Analysis, and Retrieval database of the SEC. 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 Buyer SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, and the rules and regulations of the SEC thereunder applicable to such Buyer SEC Documents. None of the Buyer SEC Documents, including any financial statements, schedules, or exhibits included or incorporated by reference therein at the time they were filed (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), contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. To the knowledge of Buyer, none of the Buyer SEC Documents is the subject of ongoing SEC review or outstanding SEC investigation and there are no outstanding or unresolved comments received from the SEC with respect to any of the Buyer SEC Documents.

6. Covenants of the Parties.

6.1. Conduct of Business Prior to Closing. From the Agreement Date until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer, the Company shall, and the Representative shall cause the Company to (a) conduct the Business in the Ordinary Course of Business; and (b) use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. Without limiting the foregoing, from the date hereof until the Closing Date, the Company shall, and the Securityholders shall cause the Company to:

6.1.1 preserve and maintain all of its Authorizations;

6.1.2 pay its Indebtedness, Liabilities, Taxes and any other obligations when due;

6.1.3 maintain the properties and assets owned, operated or used by it, including the Leased Real Property, in the same condition as they were on the Agreement Date, subject to reasonable wear and tear;

6.1.4 continue to perform all of the terms, covenants and conditions required to be performed and observed under the Realty Leases and not default or suffer to exist any event or condition which with notice or lapse of time or both would constitute a default under any Realty Lease;

6.1.5 continue in full force and effect without modification all of its insurance policies, except as required by applicable Law;

6.1.6 defend and protect its properties and assets from infringement or usurpation;

6.1.7 perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;

6.1.8 maintain its Books and Records in accordance with past practice;

6.1.9 comply in all material respects with all applicable Laws;

6.1.10 not to enter into, amend, or otherwise modify any Contract of a type that would be required to be listed on Schedule 4.13;

6.1.11 (a) not make, change or rescind any election relating to Taxes; (b) not settle or compromise any claim, controversy or Proceeding relating to Taxes; (c) except as required by applicable Law, not make any change to (or make a request to any Tax Authority to change) any of its methods, policies or practices of Tax accounting or methods of reporting income or deductions for Tax purposes; (d) not amend, refile or otherwise revise any previously filed Tax Return, or forgo the right to any amount of refund or rebate of a previously paid Tax; (e) not enter into or terminate any agreements with a Tax Authority; (f) not prepare any Tax Return in a manner inconsistent with past practices; (g) not consent to an extension or waiver of the statutory limitation period applicable to a claim or assessment in respect of Taxes; (h) not enter into a Tax allocation agreement, Tax sharing agreement or Tax indemnity agreement; (i) not grant any power of attorney relating to Tax matters; or (j) not request a ruling with respect to Taxes;

6.1.12 not to take or permit any action that would cause any of the changes, events or conditions described in Section 4.9 to occur;

6.1.13 not enter into, adopt or amend or terminate any Employee Benefit Plan or any agreement, program, policy, trust, fund or other arrangement that would be an Employee Benefit Plan if it were in existence as of the Agreement Date, or increase in any manner the compensation or fringe benefits of any director, officer, employee, consultant or independent contractor of the Company, or loan or advance any money or other property to any such Person, or grant any new stock option, stock appreciation right, performance unit or other incentive, or pay or grant any benefit not required by any plan or arrangement as in effect as of the date hereof; and

6.1.14 not assign, sublet, encumber, sell, transfer, lease, mortgage, pledge or otherwise convey an interest in or exercise any option pursuant to any Realty Lease and/or Leased Real Property.

6.2. Investigation of Business. The Company shall, and the Securityholders shall cause the Company to, afford Buyer and its accountants, attorneys, counsel, consultants, financing sources and other representatives and agents, reasonable access during normal business hours and upon reasonable advance notice to (a) all of the sites, properties, books and records of the Company, and (b) such additional financial and operating data and business, legal, insurance, regulatory, tax, compensation, other data and information as to the business and properties of Securityholder and the Company as Buyer has requested or shall hereafter reasonably request, including access upon reasonable request and reasonable advance notice to employees, customers, vendors, suppliers and creditors for due diligence inquiry.

6.3. Regulatory Matters; Third-Party Consents.

6.3.1 The Parties shall cooperate with each other and use commercially reasonable efforts promptly (or within a reasonable period prior to the applicable event requiring such action) to prepare and file all necessary documentation to effect all applications, notices, petitions, and filings and obtain as promptly as practicable such Authorizations and Consents of all Persons which are necessary in connection with the execution and delivery of the Transaction Documents and the consummation of the Transactions.

6.3.2 The Parties shall, upon request, furnish each other with all reasonably available information concerning themselves and their directors, managers, officers, shareholders, members or other equity holders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of each Securityholder, the Company, or Buyer to any Governmental Authorities in connection with the execution and delivery of this Agreement and the consummation of the Transactions (except to the extent that such information would be, or relates to information that would be, filed under a claim of confidentiality).

6.3.3 The Parties shall promptly advise each other upon receiving any communication from any Governmental Authorities whose Consent is required for consummation of the Transactions which cause such Party to believe that there is a reasonable likelihood that any requisite Governmental Authority Consent will not be obtained or that the receipt of any such approval will be materially delayed or that the Transactions will become subject to additional conditions imposed by such Governmental Authority.

6.4. Efforts of Parties to Close; Further Assurances. During the period from the Agreement Date through the Closing or the termination of this Agreement, each Party shall use its commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions precedent to the consummation of the Transactions and to do, or cause to be done, all things necessary, proper and advisable under applicable Law to consummate and make effective as promptly as practicable the Transactions. Subject to the terms and conditions provided herein, at any time from and after the Closing, at the request of a Party hereto and without further consideration, each other Party shall promptly execute and deliver such further agreements, instruments, certificates and documents and perform such other actions as the requesting party may reasonably request in order to fully consummate the Transactions and carry out the purposes and intent of this Agreement and any agreements, instruments, certificates and documents delivered hereby; *provided*, that the requesting party shall pay all reasonable and documented expenses associated therewith.

6.5. Confidential Information.

6.5.1 The Company and each Securityholder shall at all times maintain the confidentiality of Confidential Information of the Company and each of its Affiliates, and neither the Company nor any Securityholder shall disclose any such information to any Person, nor shall any Securityholder use Confidential Information for any purpose except for the benefit of the Company. "Confidential Information" shall include the following: (a) trade secrets concerning the Business, including product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, advertising methods, sales methods, price lists, market studies, business plans, computer software and programs (including object code and source code), computer software and database technologies, systems, structures and architectures (and related formulae, compositions, processes, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, however documented, that is a trade secret under applicable Law; (b) confidential or proprietary information concerning the Business (which includes historical financial statements, historical projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training and techniques and materials and operating procedures), however documented; (c) notes, analyses, compilations, studies, summaries and other material prepared by or for the Company containing or based, in whole or in part, on any information included in the foregoing; (d) the terms of this Agreement and any other Transaction Documents; and (e) such other information concerning the Company which is not generally available and part of the public domain. The restrictions contained in this Section 6.5 shall apply regardless of whether such Confidential Information (i) is in written, graphic, recorded, photographic or any machine readable form or is orally conveyed to, or memorized by, Securityholders, or (ii) has been labeled or otherwise identified as confidential or proprietary.

6.5.2 The Company's and each Securityholder's duty of confidentiality with regard to the Confidential Information shall not extend to: (a) any Confidential Information that, at the time of disclosure, had been previously published and was generally available and part of the public domain, other than as a result of a breach of any Securityholder's confidentiality obligations; (b) any Confidential Information that is published and becomes generally available and part of the public domain after disclosure, unless such publication is a breach of this Agreement, or any other applicable confidentiality obligation, by a Securityholder; and (c) any Confidential Information that is obtained by such Securityholder from a third person who: (i) is lawfully in possession of that Confidential Information; (ii) is not in violation of any contractual, legal, or fiduciary obligation to the Company, Buyer or their respective Affiliates with respect to the Confidential Information; and (iii) does not prohibit such Securityholder from disclosing the Confidential Information to other Persons.

6.5.3 In the event that the Company or any Securityholder is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena or other process or legal obligation) to disclose any Confidential Information (including the terms of this Agreement), such Securityholder agrees to: (a) give prompt written notice to the Company and Buyer of such request or subpoena in order to allow the Company or Buyer an opportunity to seek an appropriate protective order or to waive compliance with the provisions of this Agreement; and (b) cooperate with the Company and Buyer and with counsel for the Company and Buyer in responding to such request or subpoena as provided below. If the Company or Buyer fails to obtain a protective order and does not waive its rights to confidential treatment under this Agreement, such Securityholder may disclose only that portion of any Confidential Information which his or its counsel reasonably advises in writing that such Securityholder is compelled to disclose pursuant to Law. Each Securityholder further agrees that in no event will such Securityholder oppose action by the Company or Buyer to obtain an appropriate protective order or other reliable promises that confidential treatment will be accorded to the Confidential Information.

6.6. Exclusivity. The Company and the Securityholders shall not, and shall cause all of their respective representatives and Affiliates to not, (a) solicit, initiate, facilitate or encourage submissions or proposals or offers from any Person other than Buyer relating to any sale of the Business howsoever structured, whether as an acquisition or purchase of all or any part of the equity securities of the Company, or any Securityholder that is not an individual or any material part of the Business, or the Company's assets or properties (other than the sale or other disposition of such assets or properties in the Ordinary Course of Business and not in violation of this Agreement) or the sale or issuance of any equity securities of the Company or any Securityholder that is not an individual, or any merger, combination, reorganization or consolidation of the Company or any Securityholder that is not an individual (each, an "Acquisition Proposal"), (b) participate in any discussions or negotiations regarding, furnish to any other Person any information with respect to, or otherwise cooperate in any way with any Acquisition Proposal by any Person, or assist or participate in, facilitate or encourage any effort or attempt by any other Person to do or seek to do any of the foregoing, or (c) enter into any agreement or understanding, either oral or written, that would prevent, hinder or delay the Transactions. If, notwithstanding the foregoing, the Company or any Securityholders shall receive any Acquisition Proposal or any inquiry regarding any such proposal from any Person, the Company or such Securityholder shall promptly give notice thereof to Buyer and shall provide reasonable detail regarding the nature of such proposal or inquiry and the Company's or such Securityholder's (as applicable) response thereto. Each Securityholder and the Company agrees that the rights and remedies for noncompliance with this Section 6.6 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

6.7. Notification. From the date of this Agreement until the Closing, each of the Parties will give prompt notice to the other Parties of (a) the occurrence, or non-occurrence, of any event, the occurrence or non-occurrence of which would reasonably be expected to cause any representation or warranty of such Party contained in this Agreement to be untrue, incorrect or incomplete in any material respect, in each case at any time from and after the date of this Agreement until the Closing and (b) any failure to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by such Party under this Agreement.

6.8. Financing. The Securityholders and the Company shall use commercially reasonable efforts to cooperate in connection with obtaining any required approvals from Buyer's lenders and the arrangement of any financing by Buyer (whether debt, convertible debt or otherwise) including (a) cooperating with Buyer to provide the banks and other institutions or entities arranging or providing such financing all information (financial and other) with respect to Securityholders, the Company, the Business and the Transactions reasonably requested by Buyer, and (b) causing Company's officers and other Company representatives to be available to Buyer and such banks and other institutions or entities arranging or providing Buyer's financing to participate in due diligence sessions and to participate in presentations related to any transaction comprising Buyer's financing.

6.9. Employment Matters. Nothing in this Agreement shall in any way establish any requirements or create any other Liability from Buyer to any employee of the Company or to any former or future employee of the Company, including any duty, requirement, obligation or other Liability relating to continued employment, compensation, benefit plans, programs, policies and arrangements, and any other matter in connection with their employment. Further, Buyer shall not be responsible for and the Securityholders shall indemnify and hold Buyer harmless with respect to: (a) any and all Liabilities, if any, arising out of or relating to the termination or resignation of any employee of the Company on or before the Closing; or (b) any and all Liabilities relating to or resulting from the period on or before the Closing not disclosed to Buyer pursuant to Section 4.19 or Section 4.20 arising out of or relating to the termination or resignation of any employee of the Company after the Closing Date.

6.10. Record Retention. Subject to the attorney-client privilege, work product doctrine, or other similar privilege (unless pursuant to a joint defense or similar agreement), solely for the purposes of allowing the Securityholders to defend a Third-Party Claim in accordance with Section 7.3.2, Buyer shall provide the Securityholders with reasonable access, during normal business hours and upon reasonable prior written notice, to the applicable Books and Records of the Company pertaining or relating to the period on or before the Closing Date.

6.11. Public Announcements. Except as contemplated by this Agreement or as otherwise required by Law (including applicable securities Laws) or court order or, as to Buyer, by regulatory authority or listing agreement, no disclosure (whether or not in response to an inquiry) of the existence, subject matter or terms of this Agreement shall be made by any party hereto, other than any filing by Buyer with the SEC or other Governmental Authority), whether before or after the Closing, unless approved by Buyer and the Company prior to release; provided that such approval shall not be unreasonably withheld, conditioned, or delayed; provided further that in no event shall any party other than Buyer make any such disclosure prior to Buyer issuing a press release publicly announcing this Agreement; and provided further that this restriction shall not apply to Buyer from and after the Closing. Notwithstanding the immediately preceding sentence, in the event that any Buyer, the Company, or any of the Securityholders is required by Law, court order, or any listing or trading agreement to make any such disclosure, such party shall notify the other prior to making such disclosure and shall use its commercially reasonable efforts to give the other an opportunity (as is reasonable under the circumstances) to comment on such disclosure.

6.12. Director and Officer Liability. Prior to or at the Closing, the Company shall purchase, at a cost and expense to be shared equally by Buyer and Company, a director and officer liability policy, an errors and omissions policy, a cybersecurity policy and other non-occurrence based insurance policies (the "Purchased Insurance Policies") covering, as applicable, the Company and those individuals who are or were directors and officers of the Company prior to the Closing for pre-Closing periods, and covering the period commencing on the Closing Date and ending no earlier than the sixth (6th) anniversary of the Closing Date, which such policies (a) shall be acceptable to Buyer and have terms no less favorable to, as applicable, the Company and such individuals than such policies maintained by the Company, as applicable, immediately prior to the Closing for the benefit of the Company and such individuals; and (b) shall not cost, in the aggregate, more than $30,000.

6.13. Formation of Merger Sub. No later than three (3) Business Days prior to the Closing Date, Buyer shall form Merger Sub by filing with the Secretary of State of the State of Nevada all such documents necessary to accomplish the formation of Merger Sub.

6.14. R&W Policy. Buyer has obtained and bound the R&W Policy as of the Agreement Date, the cost of which shall be borne equally by Buyer, on the one hand, and the Company, on the other hand (to be treated as a Transaction Expense). Upon its final issuance, Buyer shall deliver to the Representative a copy of the R&W Policy, which shall be effective as of the Agreement Date. Following the final issuance of the R&W Policy, Buyer agrees to use commercially reasonable efforts to keep the R&W Policy in full force and effect for the policy period set forth therein. The Parties acknowledge that Buyer obtaining the R&W Policy is a material inducement to the Securityholders entering into the Transactions, and the Securityholders are relying on Buyer's covenants and obligations set forth in this Section 6.14. Buyer shall not, without the prior written consent of the Company (if prior to the Closing) or the Representative (if after the Closing), amend, waive, modify, or otherwise change the subrogation rights under the R&W Policy in a manner that would be reasonably expected to adversely affect the Securityholders. The Company shall execute and deliver all documents, instruments, certificates, and other writings required to be executed and delivered by the Company under the R&W Policy at or prior to the Closing, including to the extent required to satisfy any conditions to the effectiveness thereof or the coverage to be provided thereby.

6.15. Employees.

6.15.1 From and after the Closing Date for a period of at least one (1) year, Buyer will, or will cause the Company or its other Affiliates to, recognize the prior service with the Company of each Company Employee who continues employment with the Company immediately following the Closing (each, a "Continuing Employee") for purposes of the accrual of paid time off, seniority and, in connection with the employee benefit plans of Buyer or its Affiliates in which such Continuing Employees are eligible to participate following the Closing Date (the "Buyer Plans"), for purposes of eligibility, vesting, and levels of benefits (but not for purposes of any equity or other incentive program, benefit accruals or benefit amounts under any defined benefit pension plan or to the extent that such recognition would result in duplication of benefits) to the extent such prior service with the Company was recognized under a comparable Employee Benefit Plan of the Company immediately prior to the Closing.

6.15.2 No provision of this Section 6.15 will (i) create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of the Company or any other Person, other than the Parties and their respective successors and permitted assigns, (ii) constitute or create an employment agreement, guarantee employment for any period of time or preclude the ability of Buyer or the Company to terminate the employment or service of any Person at any time and for any reason, (iii) require the Buyer or the Company to continue any Employee Benefit Plans, or other employee benefit plans or arrangements or prevent the amendment, modification or termination hereof after the Closing, except with respect to the continuation of the Company's performance bonus plan for 2023, which amounts will be paid by Buyer no later than April 2024, or (iv) constitute or be deemed to constitute an amendment to any Employee Benefit Plan or any other employee benefit plan or arrangement sponsored or maintained by Buyer.

6.16. 280G Waivers and Cleaning Vote. The Company (i) shall use commercially reasonable measures to secure from each Person who is a "disqualified individual", as defined in Section 280G of the Code, and who has a right to any payments or benefits or potential right to any payments or benefits in connection with the consummation of the Closing (whether alone or together with any other events) that could be deemed to constitute "parachute payments" under Section 280G of the Code, a waiver of such Person's rights to receive or retain any such payments or benefits (the "Waived 280G Benefits"), and (ii) shall submit for a stockholder vote the Waived 280G Benefits, to the extent and in the manner required under Sections 280G(b)(5)(A)(ii) and 280G(b)(5)(B) of the Code and the regulations promulgated thereunder. If applicable, prior to the Closing Date, the Company shall deliver to Buyer evidence reasonably satisfactory to Buyer that stockholder approval was received in conformance with Section 280G of the Code and the regulations thereunder, or that such requisite stockholder approval has not been obtained with respect to the Waived 280G Benefits, and, consequently, the Waived 280G Benefits have not been and shall not be made or provided. Copies of the proposed forms of Section 280G waivers and related stockholder voting, consent, and disclosure materials to be used in connection with the foregoing shall be provided to Buyer at least five (5) Business Days in advance of the scheduled distribution to Securityholders or the disqualified individuals for approval or signature, as applicable, for Buyer's review, comment, and approval.

6.17. Tax Refunds. Any of the Tax refunds that are received by the Company (or any of its Affiliates) and any amounts credited against Taxes to which the Company or any of its Affiliates become entitled that relate to Taxes paid by the Company for any period or portions thereof ending on or before the Closing Date, in each case, solely to the extent set forth on Exhibit 6.17 and solely in the event that such Tax refunds are received by the Company (or any of its Affiliates) or credited against Taxes of the Company or any of its Affiliates within the twenty four (24) month period after the relevant Tax Return is filed, shall be for the account of the Securityholders. To the extent any such Tax refunds are received by the Company (or any of its Affiliates) or credited against Taxes of the Company or any of its Affiliates within the twenty four (24) month period after the relevant Tax Return is filed, Buyer shall, no later than thirty (30) days after each anniversary of the Closing Date, pay or cause to be paid over to the Paying Agent (for further payment to the Securityholders in accordance with each Securityholder's Securityholder Pro Rata Share) the aggregate amount of such Tax refunds that were received by the Company (or any of its Affiliates) or credited against Taxes of the Company or any of its Affiliates within the twenty four (24) month period after the relevant Tax Return is filed; *provided, however, that* Buyer may satisfy any Loss for which any member of the Buyer Group has a claim directly against the Securityholders under Section 7.1(c) by reducing the amount payable to the Securityholders under this Section 6.17 in the amount of that Loss, *provided, further, however, that* in no event may such offset exceed $250,000. If a Tax refund or credit is subsequently disallowed or reduced by a Governmental Authority and Buyer or the Company or any of their respective Affiliates has made a payment to Securityholders pursuant to this Section 6.17 with respect to such Tax refund or credit, then Securityholders shall return such amounts to such party promptly upon request.

7. Indemnification.

7.1. Securityholder's Indemnification. Subject to the other provisions of this Section 7, the Company and the Securityholders shall, severally but not jointly, and on and after the Closing, the Securityholders shall, severally but not jointly, defend, indemnify, and hold harmless Buyer, Buyer's Affiliates (including the Company post-Closing), and their respective successors and assigns, directors, officers, managers, members, partners, equityholders, employees, agents, and representatives (collectively, the "Buyer Group"), from and against any and all Losses arising out of, based upon, caused by, relating or with respect to, or by reason of any or all of the following: (a) any inaccuracy in or breach of any warranty or representation made by any Securityholder or the Company in this Agreement or in any other Transaction Document delivered by or on behalf of any Securityholders or the Company; (b) any breach or failure to perform any covenant or agreement in this Agreement or in any other Transaction Document to be performed by any Securityholders or the Company prior to or at the Closing or by Securityholders after the Closing; (c) any and all Indemnified Taxes; (d) any Liability arising out of the matters set forth on Schedule 4.18.1 or Schedule 4.18.2; (e) any and all of Securityholders' and the Company's Indebtedness or Transaction Expenses to the extent not paid concurrent with the Closing; (f) any and all Liabilities for brokerage commissions, finders' fees or similar compensation in connection with the Transactions that were initiated by the Company; (g) any claim by any current, former, or purported holder of Company Stock, Company Options, or other Securities involving: (i) the payment or allocation of the Merger Consideration, including any error or inaccuracy by the Company in the Payment Schedule; or (ii) any allegation or claim relating to any breach of fiduciary duties by the Company or its directors or officers in connection with the Merger or the other Transactions, including the negotiation and approval of the terms hereof; and (h) Liabilities relating to dissenter rights.

7.2. Buyer's Indemnification. Subject to the other provisions of this Section 7, Buyer shall defend, indemnify, and hold harmless the Securityholders, their respective heirs, Affiliates, successors and assigns and the directors, officers, managers, members, partners, employees, agents and representatives of any of them (collectively, the "Securityholder Group"), from and against any and all Losses arising out of, or caused by or relating to any of the following: (a) any inaccuracy in or breach of any warranty or representation by Buyer or Merger Sub contained in this Agreement or in any other Transaction Document; (b) any breach or failure to perform any covenant or agreement in this Agreement or in any other Transaction Document to be performed by Buyer or Merger Sub; (c) any and all Liabilities for brokerage commissions, finders' fees or similar compensation in connection with the Transactions that were initiated by Buyer Group.

7.3. Indemnification Procedures. With respect to each event, occurrence or matter ("Indemnification Matter") as to which any member of Buyer Group or Securityholder Group, as the case may be (in either case, referred to as, the "Indemnitee"), is or may reasonably be entitled to indemnification from Securityholders under Section 7.1 or from Buyer under Section 7.2, as the case may be (in either case, referred to as, the "Indemnitor"):

7.3.1 Notice. Within ten (10) calendar days after the Indemnitee receives written documents underlying the Indemnification Matter or, if the Indemnification Matter does not involve a Third-Party Claim, as promptly as practicable after the Indemnitee first has actual knowledge of the Indemnification Matter or of other matters from which an Indemnification Matter is reasonably likely to result, the Indemnitee shall give prompt written notice to the Indemnitor of the nature of the Indemnification Matter and, if known, the amount demanded or claimed in connection therewith ("Indemnification Notice"), together with copies of any such written documents. No delay or deficiency by an Indemnitee to give notice in respect of a Loss in the manner required by this Section 7.3 shall relieve the Indemnitor of any Liability under this Agreement in respect of such Loss except to the extent that such delay or deficiency actually and materially prejudices the rights of the Indemnitor with respect thereto.

7.3.2 Defense.

(a) If a third-party action, suit, claim or demand (a "Third-Party Claim") gives rise to an Indemnitor's obligation to provide indemnification under Section 7.1 or Section 7.2 (other than with respect to Taxes which shall be addressed in Section 8.7), then, upon receipt of the Indemnification Notice, the Indemnitor shall have ten (10) calendar days after said notice is given to elect, by written notice given to the Indemnitee, to undertake, conduct and control, through counsel of its own choosing which is reasonably acceptable to the Indemnitee and at the Indemnitor's sole risk and expense, the good faith defense of such claim, *provided* that, if the Indemnitor is the Securityholders, such Indemnitor shall not have the right to defend or direct the defense of any such Third-Party Claim if (i) the Third-Party Claim is asserted directly by a Person that is a supplier or customer of the Surviving Corporation, (ii) the Third-Party Claim seeks an injunction or other equitable relief against the Indemnitee, (iii) the assumption of defense of the Third-Party Claim by the Indemnitor is reasonably likely to cause the Buyer Group to lose insurance coverage, or (iv) the Buyer Group or the insurer is required to assume the defense of such Third-Party Claim pursuant to the R&W Policy (collectively, the "Defense Caveats").

(b) Any Indemnitee shall have the right to employ separate counsel in any such Third-Party Claim and to participate in the defense thereof (except that the defense or prosecution of such Third-Party Claim shall be tendered to the insurance carrier maintained by the Buyer if required under the terms of such insurance policy), but the fees and expenses of such counsel shall not be an expense of the Indemnitor unless (i) the Indemnitor shall have failed, within ten (10) calendar days after the Indemnification Notice is given by the Indemnitee as provided in the preceding sentence, to undertake, conduct and control the defense of such Third-Party Claim, (ii) any of the Defense Caveats applies, (iii) the employment of such counsel has been specifically authorized by the Indemnitor, (iv) there exists, in the Indemnitee's discretion, a conflict between the interests of the Indemnitor and the Indemnitee, or (v) a defense exists, in the Indemnitee's discretion, for the Indemnitee which is not available to the Indemnitor.

(c) If none of the Defense Caveats applies, and the Indemnitor elects to undertake, conduct, and control the defense of a Third-Party Claim as provided herein, then: (i) the Indemnitor will not be liable for any settlement of such Third-Party Claim effected without its consent, which consent will not be unreasonably withheld or delayed; (ii) the Indemnitor may settle such Third- Party Claim without the consent of the Indemnitee only if (A) all monetary damages payable in respect of the Third-Party Claim are paid by the Indemnitor, (B) the Indemnitee receives a full, complete and unconditional release in respect of the Third-Party Claim without any admission or finding of obligation, Liability, fault or guilt (criminal or otherwise) with respect to the Third-Party Claim, and (C) no injunctive, extraordinary, equitable or other relief of any kind is imposed on the Indemnitee or any of its Affiliates; and (iii) the Indemnitor may otherwise settle such Third-Party Claim only with the written consent of the Indemnitee, which consent will not unreasonably be withheld or delayed.

(d) If the Indemnitor fails to proceed with the good faith defense or settlement of any Third-Party Claim after making an election to undertake, conduct and control the good faith defense of such claim, then, in either such event, the Indemnitee shall have the right to contest, settle or compromise such claim at its discretion, at the risk and expense of the Indemnitor.

7.4. Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect for a period of twelve (12) months after the Closing Date; provided, that (a) the Special Representations shall survive for a period of twenty four (24) months after the Closing Date, and (b) the Fundamental Representations shall survive for a period of six (6) months after the expiration of the applicable statute of limitations. Each covenant and agreement requiring performance at or after the Closing, will, in each case, expressly survive the Closing in accordance with its terms, and if no term is specified, then for the maximum duration permitted under applicable Law, and nothing in this Section 7.4 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Any claim for Indemnified Taxes shall survive for a period of six (6) months after the expiration of the applicable statute of limitations. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non- breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved. Any claims for Losses arising out of, caused by, or relating to (a) the matters set forth in Sections 7.1(d)-(h) or (b) fraud or intentional misrepresentation shall survive indefinitely.

7.5. Amount of Losses.

7.5.1 Securityholders shall not be liable to the Buyer Group for indemnification under Section 7.1(a) until the aggregate amount of all Losses in respect of indemnification under Section 7.1(a) exceeds $285,000.00 (the "Deductible"), *provided*, *however*, the aggregate amount of all Losses for which Securityholders shall be liable pursuant to Section 7.1(a) shall not exceed the Deductible (such cap on the Securityholders' liability, the "Company Cap"). Notwithstanding the foregoing, or anything else in this Agreement to the contrary, (x) the Deductible and Company Cap shall not apply in respect of (a) breaches of Fundamental Representations, or (b) breaches of Special Representations, (y) the aggregate amount of Losses payable by Securityholders under Section 7.1(a) related to breaches of Fundamental Representations, and Sections 7.1(c)-(h) shall not exceed the Merger Consideration, and (z) the aggregate amount of Losses payable by Securityholders under Section 7.1(a) related to breaches of Special Representations shall not exceed $2,000,000. The Securityholders' indemnification obligations related to fraud shall be uncapped.

7.5.2 Buyer shall not be liable to the Securityholders for indemnification under Section 7.2(a) until the aggregate amount of all Losses in respect of indemnification under Section 7.2(a) exceeds the Deductible, in which event Buyer shall be required to pay or be liable for all Losses in excess of the Deductible. Anything in this Agreement to the contrary notwithstanding, (x) the Deductible shall not apply in respect of (a) breaches of Fundamental Representations or (b) claims for fraud, and (y) the aggregate amount of Losses payable by Buyer under Section 7.2(a) and 7.2(c) shall not exceed the Merger Consideration.

7.5.3 Notwithstanding the foregoing, the limitations set forth in this Section 7, including in Section 7.5.1 and Section 7.5.2, shall not affect or otherwise limit any claim made or available under the R&W Policy.

7.5.4 In determining whether there has been any inaccuracy in or breach of any representation, warranty, agreement, or covenant or the amount of any Losses suffered by an Indemnitee related to any inaccuracy in or breach of any representation, warranty, agreement or covenant, all qualifications or exceptions in such representation, warranty, agreement or covenant relating to or referring to "materiality" or "Material Adverse Effect" or any similar term or phrase shall be disregarded.

7.5.5 Each Securityholder agrees that (a) such Securityholder will not make any claim for indemnification or contribution against the Company by virtue of the fact that such Securityholder or such Securityholder's equityholders, directors, officers, employees or other Affiliates was an equityholder or director, manager, officer or employee of the Company, regardless of the nature of the Loss claimed, with respect to any Action brought by Buyer Group against any Securityholder, and (b) such Securityholder has no claims or rights to indemnity or contribution from the Company with respect to any amounts paid by such Securityholder pursuant to this Section 7.

7.6. Avoiding Double Payments. Anything in this Section 7 to the contrary notwithstanding, no Indemnitee shall be entitled to be indemnified under this Section 7 for any Losses to the extent such Losses were expressly treated as a Current Liability in determining the Net Working Capital Calculation or is otherwise included in the Adjustment Calculation.

7.7. Exclusive Remedy. Except for the remedies provided herein to address disputes or objections to the calculations and adjustments described herein or as otherwise specifically provided herein, the foregoing indemnification provisions in this Section 7 shall be the exclusive remedy for monetary damages of Buyer and Securityholders with respect to this Agreement; *provided, however*, that no limitation set forth in this Agreement, including the limitations set forth in this Section 7, shall limit (a) any remedy that may be available to Buyer or Securityholders against any other Party on account of fraud or intentional misrepresentation, or (b) the ability of Buyer to seek equitable remedies, including injunctive relief. Securityholders hereby waive any right to seek or obtain indemnification or contribution from the Company for Losses arising from this Agreement. Notwithstanding anything to the contrary contained herein, no limitations (including any survival limitations and other limitations set forth in this Section 7), qualifications or procedures in this Agreement shall be deemed to limit or modify the ability of Buyer to make claims under or recover under the R&W Policy; it being understood that any matter for which there is coverage available under the R&W Policy shall be subject to the terms, conditions and limitations, if any, set forth in the R&W Policy.

7.8. Tax Treatment of Indemnity Payments. The Parties agree to treat any indemnification payments made to Buyer pursuant to this Agreement as an adjustment to the final Merger Consideration, unless a "Final Determination" with respect to the indemnified party or any of its Affiliates causes any such payment not to be treated as an adjustment to the Merger Consideration. For purposes of this agreement "Final Determination" means (a) with respect to federal income Taxes, a "determination" as defined in Section 1313(a) of the Code or execution of an IRS Form 870-AD and (b) with respect to Taxes other than federal income Taxes, any final determination of liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through Proceedings or otherwise (including the expiration of a statute of limitations or a period for the filing of claims for refunds, amended returns or appeals from adverse determinations).

7.9. Payments.

7.9.1 Any Losses payable to the Buyer Group pursuant to Section 7.1(a) for breach of any representation or warranty or Section 7.1(c) for Indemnified Taxes shall, subject to Section 7.5, be satisfied: (a) first from Buyer's portion of the retention amount under the R&W Policy, (b) to the extent such Losses exceed Buyer's portion of the retention amount under the R&W Policy, next from the Indemnification Escrow Funds; (c) to the extent such Losses exceed the amounts held in the Indemnification Escrow Funds, by recovery under the R&W Policy; (d) to the extent such Losses exceed the amounts held in the Indemnification Escrow Fund and relate to a breach of a representation or warranty other than a Fundamental Representation, but such Losses do not exceed the Company Cap, by the Securityholders in accordance with each Securityholder's Securityholder Pro Rata Share up to the Company Cap; and (e) to the extent such Losses exceed the amounts held in the Indemnification Escrow Funds and relate to a breach of a Fundamental Representation or Indemnified Taxes, and such Losses are not covered by the R&W Policy for any reason (including the coverage limit being exceeded or coverage being denied, unavailable), by the Securityholders in accordance with each Securityholder's Securityholder Pro Rata Share.

7.9.2 Any Losses payable to the Buyer Group pursuant to Section 7.1(b), Section 7.1(d), Section 7.1(e), Section 7.1(f), Section 7.1(g), or Section 7.1(h) shall, subject to Section 7.5, be satisfied: (a) first, from the Indemnification Escrow Funds; and (b) to the extent that the amount of Losses exceeds the amounts available to Buyer Group in the Indemnification Escrow Funds, by the Securityholders in accordance with each Securityholder's Securityholder Pro Rata Share.

7.9.3 Buyer Group shall take commercially reasonable steps to mitigate all Losses promptly after becoming aware of any event that could reasonably be expected to give rise to any Losses that are indemnifiable hereunder, in each case, to the same extent as if such Losses were not subject to indemnification pursuant to this Section 7.9.

7.9.4 The Losses for any indemnification claim pursuant to this Agreement shall be net of (a) any insurance proceeds received by any of the Buyer Group, including under the R&W Policy (in each case, net of any costs of collection, deductible, retroactive premium adjustment, reimbursement obligation or other cost directly related to the insurance claim in respect of Losses (collectively, "Claim Costs")) (b) any tax benefit actually realized by any of the Buyer Group in cash in the tax year that the Loss is suffered by the Buyer Group (as determined on a "with and without basis" by determining the actual cash Taxes that the Buyer Group would have paid without deduction for any of the Losses at issue as compared to the actual cash Taxes that the Buyer Group has paid with the Losses deducted), and (c) the amount of any indemnification, contribution and other payment proceeds actually recovered by any of the Buyer Group from a third party in respect of such Losses, net of any reasonable costs associated with obtaining such proceeds. The Buyer Group shall use their commercially reasonable efforts to seek recovery under all insurance policies covering any Losses to the same extent as they would if such Losses were not subject to indemnification hereunder; provided, that nothing shall require the Buyer Group to (i) seek to recover any Losses under any insurance policy, including the R&W Policy (A) to the extent such Losses are specifically and manifestly excluded from coverage under such policy and directly indemnifiable hereunder, or (B) to the extent Losses are not (or are not expected to be) in excess of any applicable retention or deductible under such insurance policy; or (ii) commence litigation against any insurer, including the R&W Policy insurer, to recover proceeds under such insurance policy. In the event that an insurance recovery is made by the Buyer Group with respect to any Losses for which any such Person has been indemnified hereunder, then a refund equal to the aggregate amount of the recovery (net of all Claim Costs) shall be made promptly to the Securityholders (with such amount to be allocated among the Securityholders in accordance with the Payment Schedule).

7.10. Distributions from Indemnity Escrow Account. In the event that (a) Representative shall not have objected to the amount claimed by Buyer for indemnification with respect to any Loss in accordance with the procedures set forth in the Escrow Agreement or (b) Representative has delivered notice of their disagreement as to the amount of any indemnification requested by Buyer and either (i) Representative and Buyer shall have subsequent to the giving of such notice, mutually agreed that Securityholders are obligated to indemnify Buyer for a specified amount and Buyer and Securityholders shall have so jointly notified the Escrow Agent or (ii) a final, nonappealable judgment shall have been rendered by the court having jurisdiction over the matters relating to such claim by Buyer for indemnification from Securityholders, and the Escrow Agent shall have received in the case of clause (i) above, written instructions from Representative and Buyer or, in the case of clause (ii) above, a copy of the final, nonappealable judgment of the court, Buyer and Representative shall instruct the Escrow Agent to deliver to Buyer from the Indemnity Escrow Account any amount determined to be owed to Buyer under Section 7 in accordance with the Escrow Agreement.

7.11. Securityholders' Representative.

7.11.1 Designation. By virtue of the Securityholders that execute the Stockholder Consent, and the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, the Securityholders hereby designate Michael Weintraub as of the Agreement Date to serve as the Representative of all the Securityholders as set forth in this Agreement for all purposes in connection with this Agreement and the Transaction Documents. By signing this Agreement in the capacity of Representative, Michael Weintraub hereby accepts the appointment as the Representative for purposes of this Agreement and the Transaction Documents.

7.11.2 Authority. Without limiting the foregoing, each Securityholder shall be deemed to appoint the Representative as of Agreement Date as such Securityholder's true and lawful representative, attorney-in-fact and agent (with full power of substitution) for all purposes in connection with this Agreement and the Transaction Documents. Each Securityholder shall be deemed to grant the Representative the full and exclusive power and authority to represent and bind such Securityholder with respect to all matters related to, arising under or pursuant to the duties of the Representative under this Agreement and the Transaction Documents (including the taking by the Representative of any and all actions and the making of any decisions required or permitted to be taken on such Securityholder's behalf), including: (a) to bring, defend and/or resolve any claim made or threatened pursuant to this Agreement or any Transaction Document; (b) to negotiate, settle, adjust or compromise any such claims (including the payment of funds from the Indemnification Escrow Funds, to Buyer Group), bring suit or seek arbitration with respect to any such claims, and comply with orders of courts and awards of arbitrators with respect to any such claims; (c) to act on behalf of such Securityholder in connection with the matters contemplated by this Agreement or any Transaction Document; (d) to act on behalf of such Securityholder in reviewing the Closing Statement and Buyer's calculation of the Merger Consideration and Net Working Capital and making any objections to such amount and negotiating on behalf of such Securityholder in order to resolve any dispute relating to the Merger Consideration or Net Working Capital; (e) to use reasonable efforts to enforce and protect the rights and interests of the Securityholders arising out of or under or in any manner relating to this Agreement and the Transactions; (g) to execute and deliver all amendments and waivers to this Agreement and any and all other documents that the Representative deems necessary, desirable or appropriate (h) to receive the Reserve Amount or, if necessary, additional funds, for the payment of expenses of the Securityholders and apply such Reserve Amount (or any additional funds, if applicable) in payment for such expenses; and (i) to receive service of process in connection with any claims under this Agreement. A decision, act, consent or instruction of the Representative as to any of the foregoing matters shall constitute a decision of all the Securityholders and shall be final, binding and conclusive on each Securityholder. Buyer may rely upon such decision, act, consent or instruction of the Representative as being the decision, act, consent or instruction of every Securityholder. The Representative, in its sole and absolute discretion, may, by written notice to Buyer and the applicable Securityholders, decline to exercise the power and authority granted herein to act on behalf of and in the name of any or all Securityholders with respect to any or all matters specified in such written notice, without incurring any liability to any party to this Agreement in connection with or as a result of such declination. EACH SECURITYHOLDER AND THE COMPANY (ON BEHALF OF THE VESTED OPTION HOLDERS) AGREES THAT SUCH AGENCY AND PROXY ARE COUPLED WITH AN INTEREST, ARE THEREFORE IRREVOCABLE WITHOUT THE CONSENT OF THE REPRESENTATIVE AND SHALL SURVIVE THE DEATH, INCAPACITY, BANKRUPTCY, DISSOLUTION OR LIQUIDATION OF ANY OF THE SECURITYHOLDERS.

7.11.3 Exculpation; Indemnification. Neither the Representative nor any agent employed by it shall incur any liability to any Securityholder relating to the performance of its duties hereunder or under any Transaction Documents for any error of judgment, or any action taken, suffered or omitted to be taken on behalf of the Securityholders (or any of them), except in the case of the Representative's gross negligence, willful misconduct or fraud. The Representative may consult with counsel of his own choice and shall have full and complete authorization and protection for any action taken or suffered by the Representative hereunder in good faith and in accordance with the advice of such counsel. The Securityholders shall indemnify, defend and hold harmless the Representative from and against any and all losses, liabilities, damages, claims, penalties, fines, forfeitures, actions, fees, costs and expenses (including the fees and expenses of counsel and experts and their staffs and all expense of document location, duplication and shipment) (collectively, "Representative Losses") arising out of or in connection with the Representative's execution and performance of this Agreement and any Transaction Documents, in each case as such Representative Loss is suffered or incurred. If not paid directly to the Representative by the Securityholders, any such Representative Losses may be recovered by the Representative from (i) the Reserve Amount and (ii) any other funds that become payable to the Securityholders under this Agreement at such time as such amounts would otherwise be distributable to the Securityholders; *provided, however*, that while this Section 7.11.3 allows the Representative to be paid from the aforementioned sources of funds, this does not relieve the Securityholders from their obligation to promptly pay such Representative Losses as they are suffered or incurred, nor does it prevent the Representative from seeking any remedies available to it at law or otherwise. In no event will the Representative be required to advance its own funds on behalf of the Securityholders or otherwise. Notwithstanding anything in this Agreement to the contrary, any restrictions or limitations on liability or indemnification obligations of, or provisions limiting the recourse against non-parties otherwise applicable to, the Securityholders set forth elsewhere in this Agreement are not intended to be applicable to the indemnities provided to the Representative under this Section 7.11.3. The foregoing indemnities will survive the Closing, the resignation or removal of the Representative or the termination of this Agreement.

7.11.4 Approval of Actions. Each Securityholder hereby irrevocably agrees to be bound by all actions taken by the Representative in its capacity as such within the scope of the Representative's duties under this Section 7.

7.11.5 Expenses. Each Securityholder hereby acknowledges and agrees that any loss, liability or expense, including reasonable attorneys' fees and expenses, incurred by the Representative shall be reimbursed out of the Reserve Amount and, if the Reserve Amount is exhausted, by the Securityholders in accordance with their respective Securityholder Pro Rata Share; *provided, however*, that the Representative shall be entitled to withhold from any amounts released in accordance with terms of the Escrow Agreement from the Indemnification Escrow Accounts to the Securityholders any amounts that are not so reimbursed by the Securityholders.

7.11.6 Certain Limitations. Notwithstanding anything in this Agreement to the contrary, the Representative shall not agree to any amendment, modification or waiver of the provisions of this Agreement that (a) alters or changes from the provisions set forth in this Agreement the amount or kind of consideration to be received by Securityholders, without the prior written consent of each Securityholder, (b) adversely and disproportionately (in relation to the other Securityholders of the same class or series) affects the rights or obligations of any Securityholder under this Agreement, without the prior consent of such affected Securityholder, or (c) that amends or modifies this Section 7.11.

7.11.7 Successor Representative. Upon the death, disqualification or resignation of the Representative, a successor shall be appointed by the Securityholders who held a majority of the Company Stock as of immediately prior to Closing who shall succeed the Representative as the "Representative" for purposes of this Agreement and the Transaction Documents.

7.11.8 Reserve Amount. The Reserve Amount shall be held by the Representative in a segregated client account (the "Reserve Account") and shall be used for the purposes of paying directly or reimbursing the Representative for any third party expenses pursuant to this Agreement. The Securityholders acknowledge that the Representative is not providing any investment supervision, recommendations or advice. Representative shall have no responsibility or liability for any loss of principal of the Reserve Account other than as a result of its gross negligence or fraud. At such time following the release in full of the Escrow Amount that the Representative determines, in its reasonable discretion, the Representative shall disburse the balance of the Reserve Account to the Securityholders. For Tax purposes, the Reserve Amount will be treated as having been received and voluntarily set aside by the Securityholders at the time of Closing.

7.11.9 Limits on Liability of Representative. Notwithstanding anything contained herein to the contrary, no Person serving as the Representative shall have any liability in such capacity to Buyer (including, any direct liability, vicarious liability, or liability that Buyer could in any way assert through other parties hereunder or through third parties) to the extent resulting from an act or omission made in good faith, in the Representative's reasonable judgment, in connection with functioning as the Representative. The Representative may consult with counsel of his own choice and shall have full and complete authorization and protection for any action taken or suffered by the Representative hereunder in good faith and in accordance with the advice of such counsel.

8. Tax Matters.

8.1. Pre-Closing Tax Returns. Buyer will cause the Company to prepare and file on a timely basis, (a) all Tax Returns with respect to the Company for taxable periods ending on or before the Closing Date ("Pre-Closing Tax Periods") that are not filed on or before the Closing Date and (b) all Tax Returns for Tax periods beginning before and ending after the Closing Date ("Straddle Tax Period"). All such Tax Returns shall be filed in accordance with the past practices of the Company unless contrary to applicable Law. Buyer will submit all such income or franchise Tax Returns for Pre-Closing Tax Periods to the Representative for their review at least 30 days prior to filing and consider, in good faith, any comments of the Representative that are reasonable and that are received by the Buyer at least fifteen days prior to the filing date.

8.2. Payment of Taxes.

8.2.1 Payment of Taxes. To the extent that Taxes of the Company for all Pre-Closing Tax Periods and portions of any Straddle Tax Period ending on the Closing Date (including all such Taxes payable with respect to Tax Returns filed under this Section 8 and any Taxes assessed after the Closing with respect to Pre-Closing Tax Periods and portions of any Straddle Tax Period ending on the Closing Date) are expressly (x) accrued or reserved for as Current Liabilities in line items on the Closing Statement and taken into account in determining the Net Working Capital Calculation or (y) included in Indebtedness, Buyer will pay or cause to be paid such Taxes. To the extent such Taxes for Pre-Closing Tax Periods and portions of any Straddle Tax Period ending on the Closing Date are not so reflected as Current Liabilities on the Closing Statement and not taken into account in determining the Net Working Capital Calculation or not included in Indebtedness, the Securityholders will pay all such Taxes incurred by the Company for the Pre-Closing Tax Periods and portions of the Straddle Tax Periods ending on the Closing Date including any Taxes from the payments under any employee sale bonuses, change of control agreements, option cancellation agreements or any other payments that are treated as compensation for federal, state or local income Tax purposes, including the Company's portion of such Taxes. Taxes that are payable with respect to a Straddle Tax Period will be allocated to the portion of the period that ends on the Closing Date in accordance with Section 8.3. Any Taxes required to be paid by the Securityholders pursuant to this Section 8.2 shall be paid directly by the Securityholders and not from the Escrow Funds.

8.2.2 In the case of Tax Returns filed by Buyer under this Section 8 and as to which Buyer expects payment from the Securityholders, Buyer shall deliver the pertinent Tax Return to the Representative and inform the Representative of any amounts due from the Securityholders at least ten (10) days prior to the due date of the pertinent Tax Return, and the Securityholders will pay such amounts to Buyer in immediately available funds at least five (5) days prior to the due date of the Tax Return.

8.2.3 To the extent that any obligation or responsibility to pay, or indemnify for, Taxes pursuant to this Section 8.2 may overlap with an obligation or responsibility pursuant to Section 7, the Buyer, at its discretion, shall be permitted to apply this Section 8.2 to such obligation or responsibility (or any part thereof), or alternatively, to apply Section 7 to such obligation or responsibility (or any part thereof).

8.3. Tax Apportionment. In the case of Taxes that are payable with respect to a Straddle Tax Period, the portion of any such Tax that is allocable to the portion of the Straddle Tax Period ending on the Closing Date will be (a) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible), deemed equal to the amount which would be payable if the taxable period ended as of the close of business on the Closing Date; *provided*, *however*, that all exemptions, allowances, or deductions for the Straddle Tax Period which are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated in proportion to the number of days in each period; and (b) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company, or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of calendar days in the period ending on the Closing Date and the denominator of which is the number of calendar days in the entire period. Any Taxes that would be computed at the end of a Tax year, including Taxes computed pursuant to Subpart F of the Code, Global Intangible Low-Taxed Income and income from any pass-through entities shall be computed as if the applicable Tax year of such entity ended on the Closing Date and any Taxes owed by the Company for such period shall be treated as incurred in the portion of the Straddle Period ending on the Closing Date.

8.4. Transactional Taxes. Notwithstanding any other provision of this Agreement, all transfer, documentary, recording, notarial, sales, use, registration, stamp and other similar Taxes or fees imposed by any Taxing Authority in connection with the Transactions will be borne equally by Buyer, on the one hand, and by the Securityholders (on a several, but not joint basis), on the other hand. The Representative will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes and, if required by applicable Law, Buyer will join in the execution of any such Tax Returns or other documentation.

8.5. Audits and Claims.

8.5.1 Buyer shall have the right (at Buyer' cost and expense) to control the conduct of any audit, examination, investigation or administrative, court or other Proceeding ("Tax Proceedings"). The Representative shall be entitled to attend and participate in any such Tax Proceedings at the Representative' sole cost and expense if such Tax Proceedings could result in a claim for indemnification for any Tax against Securityholders hereunder.

8.5.2 If Buyer or the Representative receive any written or oral communication with respect to a Tax claim for which the other Party has potential liability under the terms of this Agreement, then such Party shall promptly notify the other Party hereto in writing of the existence of such Tax claim.

8.6. Cooperation on Tax Matters.

8.6.1 Buyer, the Company and the Representative shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Tax Proceeding. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information reasonably relevant to any such audit, litigation, or other Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Company, the Representative and Buyer agree (a) to retain all Books and Records with respect to Tax matters pertinent to the Business relating to any taxable period beginning before the Closing Date until expiration of the statute of limitations (and, to the extent notified by Buyer or the Representative, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Taxing Authority, and (b) to give the other Party reasonable written notice prior to transferring, destroying, or discarding any such books and records and, if the other Party so requests, Buyer, the Company or the Representative, as the case may be, shall allow the other Party to take possession of such books and records.

8.6.2 Buyer and the Representative 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 Tax that could be imposed (including with respect to the Transactions).

8.7. Tax Dispute Resolution Mechanism. Any dispute among the Parties involving Taxes arising under this Agreement shall be resolved as follows: (a) the Parties will in good faith attempt to negotiate a prompt resolution of the dispute; (b) if the Parties are unable to negotiate a resolution of the dispute within thirty (30) days, the dispute will be submitted to an Accounting Arbitrator; (c) the Accounting Arbitrator shall resolve the dispute, in a fair and equitable manner and in accordance with applicable Tax Law and the provisions of this Agreement, within thirty (30) days after the Parties have submitted the dispute to the Accounting Arbitrator, whose decision shall be final, conclusive and binding on the Parties, absent fraud or manifest error; (d) any payment to be made as a result of the resolution of a dispute shall be made, and any other action taken as a result of the resolution of a dispute shall be taken, on or before the fifth (5th) day following the date on which the dispute is resolved (except that if the resolution requires the filing of an amended Tax Return, such amended Tax Return shall be filed within thirty (30) days following the date on which the dispute is resolved); and (e) the fees and expenses of the Accounting Arbitrator shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by the Securityholders.

9. Conditions Precedent to Closing.

9.1. Buyer's Conditions Precedent to Closing. The Buyer's obligation to consummate the Transactions, including the Merger, and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

9.1.1 Accuracy of Representations and Warranties. The representations and warranties of the Company and the Securityholders set forth in this Agreement or in any other Transaction Documents (other than such representations and warranties that are Fundamental Representations) will be true, correct and complete as of the Agreement Date and as of Closing, except in each case to the extent any such representation and warranty speaks as of any other specific date, in which case such representation and warranty will have been true, correct and complete, as applicable, as of such date, in each case except for breaches as to matters that would not reasonably be expected to have a Material Adverse Effect. The Fundamental Representations of the Company and the Securityholders set forth in this Agreement or in any other Transaction Documents will be true, correct and complete in all material respects as of the Agreement Date and as of Closing, except in each case to the extent any such representation and warranty speaks as of any other specific date, in which case such representation and warranty will have been true, correct and complete, as applicable, as of such date.

9.1.2 Performance of Covenants. All of the covenants and obligations that the Company or any Securityholder is required to perform or comply with under this Agreement or in any other Transaction Documents on or before the Closing must have been duly performed and complied with.

9.1.3 No Conflict. Neither the consummation nor the performance of any of the Transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Buyer or any Affiliate of Buyer to suffer any adverse consequence under (a) any applicable Law or Order or (b) any applicable Law or Order that has been published, introduced or otherwise proposed by or before any Governmental Authority.

9.1.4 Consents and Authorization. All Consents, notices to and authorizations from Governmental Authorities and the other Persons set forth on Exhibit 9.1.9(r) required in order to consummate the Transactions shall have been delivered, received or obtained, as applicable.

9.1.5 No Material Adverse Effect. Since the Agreement Date, there must not have been any Material Adverse Effect.

9.1.6 No Orders. There must not be in effect any Order which is materially adverse to the Company, the Business or Securityholders or that would restrain, prohibit, interfere with, delay or make illegal the consummation of, or otherwise materially alter, the Transactions or cause the Transactions to be rescinded following consummation.

9.1.7 Litigation. No Proceeding shall have been instituted by any Governmental Authority to restrain or prohibit any material part of the Transactions or to seek any material divestiture by Securityholders or Buyer or to revoke or suspend any material Authorization by reason of any of the Transactions; nor shall any Governmental Authority have notified any Party that consummation of any material part of the Transactions would constitute a violation of applicable Law or that it intends to commence a Proceeding to restrain, prohibit, interfere with, delay or make illegal any material part of the Transactions or to require such material divestiture, revocation or suspension with respect to Securityholders or Buyer. No Proceeding shall have been instituted by any Person other than a Governmental Authority which, if determined adversely, would have a Material Adverse Effect.

9.1.8 No Dissenters. As of the Closing, no Shareholder shall have made a valid demand for appraisal rights pursuant to Section 92A.390 of the Nevada Act.

9.1.9 Closing Deliveries. At the Closing (or such earlier date if specified below), the Company or the Representative, as applicable, shall have delivered the following items to Buyer, each in form and substance satisfactory to Buyer:

(a) Articles of Merger, duly executed on behalf of the Company, and any related Officer's Certificates;

(b) the Security Deliveries which have been executed and delivered to the Company by the Securityholders prior to the Closing, which shall include, at a minimum, Joinder and Support Agreements and Letters of Transmittal duly executed by each of the Major Holders and IMS Health Incorporated;

(c) a counterpart of the Escrow Agreement, duly executed by Representative;

(d) a Restrictive Covenant Agreement, in the form and substance attached as Exhibit 9.1.9(d), duly executed by each of the Management Holders;

(e) a bonus and release agreement, duly executed by each Person receiving a Transaction Bonus, each in form and substance reasonably satisfactory to Buyer;

(f) a counterpart of the Paying Agent Agreement substantially in the form attached hereto as Exhibit 9.1.9(f), duly executed by the Company and the Representative;

(g) the resignations, effective as of the Closing, duly executed by each of the directors and officers of the Company, each in form and substance reasonably satisfactory to Buyer;

(h) subscription agreements, each substantially in the form attached hereto as Exhibit 9.1.9(h), duly executed by each of the Management Investors (collectively, the "Subscription Agreements");

(i) evidence of the satisfaction of all payment obligations for Transaction Expenses and Indebtedness of the Company outstanding as of the Closing Date (including any interest, prepayment premiums or penalties and other fees and charges) or evidence of the arrangement of Securityholders or the Company to satisfy such payment obligations on the Closing Date pursuant to the terms of this Agreement, including payoff letters or similar releases with respect to such Indebtedness, and the release of any Liens on the properties and assets of the Company and the termination of all UCC financing statements which have been filed with respect to such Indebtedness (or the authorization of Buyer by the holders of such Liens to file UCC financing statement terminations);

(j) a good standing certificate for the Company from the Secretary of State of the State of Nevada, and from the Secretary of State in each other jurisdiction in which the Company is qualified to do business as a foreign corporation, in each case dated as of a date not earlier than ten (10) Business Days prior to the Closing;

(k) a copy of (i) the Articles of Incorporation (together with any and all amendments thereto), as filed with the Secretary of State of the State of Nevada, as then in effect as certified by the Secretary of the Company, and (ii) the bylaws of the Company certified by the Secretary of the Company;

(l) a certificate of an officer of the Company certifying (i) the names and signatures of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder, (ii) the resolutions of the Company's Board of Directors and Securityholders approving this Agreement and the other Transaction Documents delivered by or on behalf of it pursuant to this Agreement and (iii) that the conditions set forth in Section 9.1.1, Section 9.1.2, Section 9.1.5, and Section 9.1.8 herein have been met;

(m) actual or constructive possession of the Books and Records for the Company and keys, combinations and codes to all locks and security devices to the Leased Real Property;

(n) an affidavit from the Company, dated as of the Closing Date, sworn under penalty of perjury and in form and substance approved by Buyer stating that the Company is not a United Stated Real Property Holding Corporation (as defined in Section 897(c)(2) of the Code), and has not been, during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code;

(o) all instruments or documents necessary to change the names of the individuals who have access to or are authorized to make withdrawals or dispositions of or from all bank accounts or other accounts, certificates of deposit, marketable securities, other investments, safe deposit boxes, lock boxes and safes of the Company, or evidence that each the Company has removed all such authorized signatories, and all keys and combinations to all safe deposit boxes, lock boxes and safes of the Company;

(p) such landlord consents, estoppel certificates, non-disturbance and subordination agreements with respect to the Leased Real Property as Buyer may reasonably request, in form and substance reasonably satisfactory to Buyer and any applicable lenders of Buyer and the agent(s) therefor;

(q) a consulting agreement by and between the Buyer and each of Michael Weintraub and Scott Magnano, in each case in form and substance reasonably satisfactory to Buyer;

(r) evidence that the Company shall have obtained or delivered, as applicable, all consents, notices, and waivers, as applicable, of the other Persons set forth on Exhibit 9.1.9(r);

(s) each Management Investor, Robert Robinson, Dina MacEwan, Holly Westbrook, and at least 75% of the other Persons who were employed by the Company as of the Agreement Date shall accept an offer of employment (or engagement) with Buyer and execute and deliver all agreements and other documents required by Buyer relating to such employment (or engagement);

(t) evidence in form and substance reasonably satisfactory to Buyer that each of the Purchased Insurance Policies have been obtained and are in full force and effect; and

(u) such other agreements, instruments, certificates and documents as Buyer may reasonably request for the purpose of facilitating the consummation or performance of the Transactions, in each case in form and substance reasonably satisfactory to Buyer.

9.2. Company's Conditions Precedent to Closing. The Company's obligation to consummate the Transactions, including the Merger, and to take the other actions required to be taken by the Company at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Company, in whole or in part):

9.2.1 Accuracy of Representations and Warranties. The representations and warranties of the Buyer set forth in this Agreement or in any other Transaction Documents (other than such representations and warranties that are Fundamental Representations) will be true, correct and complete as of the Agreement Date and as of Closing, except in each case to the extent any such representation and warranty speaks as of any other specific date, in which case such representation and warranty will have been true, correct and complete, as applicable, as of such date, in each case except for breaches as to matters that would not reasonably be expected to have a Material Adverse Effect. The Fundamental Representations of the Buyer set forth in this Agreement or in any other Transaction Documents will be true, correct and complete in all material respects as of the Agreement Date and as of Closing, except in each case to the extent any such representation and warranty speaks as of any other specific date, in which case such representation and warranty will have been true, correct and complete, as applicable, as of such date.

9.2.2 Performance of Covenants. All of the covenants and obligations that Buyer is required to perform or comply with under this Agreement or in any other Transaction Documents on or before the Closing must have been duly performed and complied with.

9.2.3 No Conflict. Neither the consummation nor the performance of any of the Transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Securityholders or any Affiliate of Securityholders to suffer any adverse consequence under (a) any applicable Law or Order or (b) any applicable Law or Order that has been published, introduced or otherwise proposed by or before any Governmental Authority.

9.2.4 Closing Deliverables. At the Closing (or such earlier date if specified below), Buyer shall have delivered the following items to the Representative or the Paying Agent, as applicable:

(a) the amount of the Merger Consideration that is payable in accordance with Section 2.1.2;

(b) a counterpart of the agreements set forth in Section 9.1.9 to which Buyer or Merger Sub is a party or is required to execute; and

(c) a certificate of the Secretary of each of Buyer and Merger Sub certifying (i) the names and signatures of the officers of Buyer and Merger Sub authorized to sign this Agreement and the other Transaction Documents delivered by or on behalf of Buyer or Merger Sub pursuant to this Agreement, (ii) the resolutions of the Board of Directors of Buyer and Merger Sub approving this Agreement and the other Transaction Documents delivered by or on behalf of Buyer pursuant to this Agreement; (iii) that the conditions set forth in Section 9.2.1 and Section 9.2.2 herein have been met, and (iv) the R&W Policy has been obtained, is in full force and effect, and has not been amended since the Agreement Date.

10. Termination.

10.1. Termination of Agreement. Notwithstanding anything herein to the contrary, this Agreement may be terminated as follows:

10.1.1 by mutual written consent of Buyer and the Representative;

10.1.2 by Buyer if there has been a breach of any of the Securityholders' or the Company's representations, warranties or covenants contained in this Agreement, which breach would result in the failure of a condition set forth in Section 9.1, and which breach has not been cured within five (5) days after the written notice of the breach from Buyer or is incapable of being cured;

10.1.3 by Representative if there has been a breach of any of the Buyer' representations, warranties or covenants contained in this Agreement, which breach would result in the failure of a condition set forth in Section 9.2, and which breach has not been cured within five (5) days after the written notice of breach from Representative or is incapable of being cured;

10.1.4 by Buyer upon the occurrence of a Material Adverse Effect;

10.1.5 by Buyer if the Closing has not occurred (other than through the failure of Buyer to comply with its obligations under this Agreement or any other Transaction Documents) by December 31, 2023; or

10.1.6 by the Representative if the Closing has not occurred (other than through the failure of the Company or the Securityholders to comply with their obligations under this Agreement or any other Transaction Documents) by December 31, 2023.

10.2. Effect of Termination. Each Party's rights of termination under Section 10.1 are in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such rights of termination is not an election of remedies. If this Agreement is terminated pursuant to Section 10.1, all obligations of the Parties under this Agreement terminate and the parties shall have no further obligations to each other, except that (a) the provisions of Section 7, this Section 10.2 and Section 11 will remain in full force and survive any termination of this Agreement and except as provided in the following clause (b) and (b) if this Agreement is terminated by a Party because of the breach of this Agreement by another Party or because one or more of the conditions to the terminating Party's obligations under this Agreement is not satisfied as a result of the other Party's failure to comply with its obligations under this Agreement, the terminating Party's right to pursue all legal remedies will survive such termination unimpaired.

11. Additional Terms and Provisions.

11.1. No Third-Party Beneficiaries. Except as expressly set forth herein (including (a) Buyer Group, the members of which shall be express third-party beneficiaries hereof, and (b) Securityholder Group, the members of which shall be express third-party beneficiaries hereof), this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, personal representatives, heirs and estates, as the case may be.

11.2. Entire Agreement. This Agreement and the other Transaction Documents (including all schedules and the exhibits) constitute the entire agreement among the Parties with respect to the Transactions and supersede any prior understandings or agreements by or among the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

11.3. Assignment. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, personal representatives, heirs and estates, as the case may be. No Party hereto shall assign this Agreement or any part hereof without the prior written consent of the other Parties, and any assignment in contravention of the foregoing shall be null and void; *provided, however*, Buyer may assign this Agreement and its rights and obligations under this Agreement, in whole or in part, without consent, to any of its Subsidiaries or Affiliates or any Person that acquires all or substantially all of the capital stock or assets of Buyer or the Company, provided that Buyer remains obligated to all of its obligations under this Agreement and any Transaction Document to which it is a party. Further, Buyer and the Company may assign any of their respective rights, interests or obligations hereunder for collateral security purposes to any lender providing financing to Buyer or their Affiliates, and any such lender may exercise all of the rights and remedies of Buyer and the Company hereunder.

11.4. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made by delivery in person, by a recognized overnight courier service, by electronic mail or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.4):

If to Representative or Securityholders, or prior to Closing, the Company, to:

Michael Weintraub, as Representative
10799 N 90th Street, Suite 200
Scottsdale, Arizona 85260
E-mail: mdweintraub@outlook.com

with copies (which shall not constitute notice) to:

Weiss Brown, PLLC
6263 N. Scottsdale Road, Suite 340
Scottsdale, Arizona 85250
Attention: Scott K. Weiss
Telephone: 480.327.6651
E-mail: scott.weiss@weissbrown.com

If to the Buyer, Merger Sub or, following the Closing, the Company, to:

OptimizeRx Corporation
260 Charles Street, Suite 302
Waltham, MA 02453
Attention: Marion Odence-Ford
E-mail: modenceford@optmizerx.com

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

Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
Attention: Gary Goldenberg; Shaun Bockert
E-mail: Gary.Goldenberg@blankrome.com; Shaun.Bockert@blankrome.com

or to such other address or addresses as the Parties may from time to time designate in writing. Any notice which is delivered personally or by facsimile or electronic mail in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or its agent. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth Business Day after the day it is so placed in the mail (or on the first Business Day after placed in the mail if sent by overnight courier) or, if earlier, the time of actual receipt.

11.5. Controlling Law. THIS AGREEMENT IS MADE UNDER, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED SOLELY THEREIN, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

11.6. Jurisdiction and Process. ANY LEGAL ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS MAY BE INSTITUTED IN THE STATE OR FEDERAL COURTS LOCATED IN THE STATE OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH ACTION. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY ACTION IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

11.7. Waiver of a Jury Trial. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR ANY OF THE TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

11.8. Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each of Buyer, Merger Sub, and the Representative. Any Party may waive another Party's breach of or compliance with this Agreement, but any waiver must be in a writing signed by the waiving Party. A Party's waiver does not waive any other earlier, concurrent, or later breach or compliance.

11.9. The Representative. The Buyer and Merger Sub shall have the absolute right and authority to rely upon the acts taken or omitted to be taken by the Representative on behalf of the Securityholders, and the Buyer and Merger Sub shall have no duty to inquire as to the acts and omissions of the Representative. The Buyer and Merger Sub are hereby relieved from any Liability to any Person for any acts done by them in accordance with any decision, act, consent, or instruction of the Representative.

11.10. Severability; No Waiver. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by any Party, and no course of dealing between or among any of the Parties, shall constitute a waiver of, or shall preclude any other or further exercise of, any right, power or remedy.

11.11. Expenses. Unless this Agreement expressly provides otherwise, each Party shall bear any expenses, including Transaction Expenses, it incurs in connection with the negotiation and consummation of the Transactions. The Parties acknowledge and agree that the fees, costs, expenses, premiums, and taxes payable in connection with the Escrow Agent and the R&W Policy shall be borne one half by the Company (and included in the Transaction Expenses) and one half by the Buyer.

11.12. Full Understanding. Each of the Parties hereby acknowledges and confirms that each such Party has read and understands the entirety of this Agreement, including the representations and warranties, covenants and indemnification obligations contained herein. The Parties negotiated this Agreement at arm's-length, jointly participated in drafting it, and received advice from independent legal counsel before they signed it. Accordingly, any court or other Governmental Authority or arbitrator construing or interpreting this Agreement will do so as if the Parties jointly drafted it and will not apply any presumption, rule of construction, or burden of proof favoring or disfavoring a Party because that party (or any of its representatives) drafted any part of this Agreement.

11.13. Construction. In construing this Agreement, including the exhibits and schedules hereto, the following principles shall be followed: (a) the terms "herein," "hereof," "hereby," "hereunder" and other similar terms refer to this Agreement as a whole and not only to the particular Article, Section or other subdivision in which any such terms may be employed; (b) except as otherwise set forth herein, references to Articles, Sections, schedules and exhibits refer to the Articles, Sections, schedules and exhibits of this Agreement, which are incorporated in and made a part of this Agreement; (c) a reference to any Person shall include such Person's predecessors; (d) unless the context otherwise requires, all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP consistently applied; (e) no consideration shall be given to the headings of the Articles, Sections, schedules, exhibits, subdivisions, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction; (f) the word "includes" and "including" and their syntactical variants mean "includes, but is not limited to" and "including, without limitation," and corresponding syntactical variant expressions; (g) the term Agreement means this Agreement as amended or modified; (h) the word "discretion" and its syntactical variants is deemed to be preceded by the word "sole" (i) a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place in this Agreement where it is defined, including in any schedule or exhibit; (j) the word "dollar" and the symbol "$" refer to the lawful currency of the United States of America; (k) the plural shall be deemed to include the singular and vice versa; (l) unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa and (m) any reference to an "employee" of the Business or of the Company shall include any person employed by the Company, whether directly or indirectly by lease or co-employment arrangement, with a third-party or otherwise.

11.14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. A signed copy of this Agreement delivered by facsimile, electronic mail or other means of electronic transmission (including without limitation, DocuSign) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

11.15. Non-Recourse. Except with respect to the named parties to this Agreement, no past, present or future incorporator, organizer, manager, member, partner, shareholder, director, officer, employee, representative, agent, Affiliate or attorney of Buyer shall have any Liability for any obligations or liabilities of Buyer under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereunder, other than with respect to fraud. The provisions of this Section 11.15 are intended to be for the benefit of, and enforceable by, any incorporator, organizer, manager, member, partner, shareholder, director, officer, employee, representative, agent, Affiliate or attorney of Buyer, and each such Person shall be a third-party beneficiary of Section 11.1.

11.16. Specific Performance. The Parties each acknowledge that the rights of each party to consummate the Transactions are special, unique and of extraordinary character and that, in the event that any Party violates or fails or refuses to perform any covenant or agreement made by it in this Agreement, the non-breaching party may be without an adequate remedy at Law. The Parties agree, therefore, that in the event that any Party violates or fails or refuses to perform any covenant or agreement made by such Party in this Agreement, the non-breaching Party or Parties may, subject to the terms of this Agreement and in addition to any remedies at Law for damages or other relief, institute and prosecute an action in any court of competent jurisdiction to enforce specific performance of such covenant or agreement or seek any other equitable relief.

11.17. Joinder. The Parties hereto acknowledge that the Securityholders may join as signatories and Parties to this Agreement by executing a Joinder and Support Agreement.

-Signature Page Follows-

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Agreement Date.

BUYER:

OPTIMIZERX CORPORATION

By: /s/ William J. Febbo
Name: William J. Febbo
Title: Chief Executive Officer

COMPANY:

HEALTHY OFFERS, INC.

By: /s/ Michael Weintraub
Name: Michael Weintraub
Title: Chief Executive Officer

REPRESENTATIVE:

/s/ Michael Weintraub
Michael Weintraub, not in his individual capacity, but as representative of the Securityholders

DEFINED TERMS

Schedule 1

Defined Terms

"Accounting Arbitrator" means an audit or tax partner of nationally recognized firm of independent certified public accounts mutually agreeable to both the Representative and the Buyer, provided such accountant or accounting firm shall not have been engaged or provided services to either party, or any of their Affiliates, during the prior three (3) years, and shall remain independent during the length of any dispute or until expiration of the review periods pursuant to this Agreement.

"Accrued Income Taxes" means the amount calculated as of the end of the date on the Closing Date (which shall not be less than zero) of any unpaid federal, state and local income or franchise Tax liabilities of the Company that are attributable to a Pre-Closing Tax Period (including the portion of a Straddle Tax Period ending on the Closing Date). The calculation of Accrued Income Taxes shall include (a) include all adjustments made pursuant to Section 481 of the Code (or any similar provision of applicable state, local or foreign Law) that have not previously been included in income by the Company without any offset for future tax refunds or tax benefits and, (b) include all amounts that the Company will be required to include after the Closing Date as a result of any prepaid amount received or deferred revenue realized on or prior to the Closing Date, (c) include all adjustments that are required to be made pursuant to Section 481 of the Code (or any similar provision of applicable state, local, or foreign Law) that is required to be included as taxable income of the Company in a Tax period or portion thereof beginning after the Closing Date as result of change in an improper accounting method that was utilized by the Company prior to the Closing, (d) exclude any Taxes attributable to any action taken by Buyer or any Affiliate thereof on the Closing Date after the Closing that is outside the ordinary course of business and the past practices of the Company and that is not expressly contemplated by this Agreement, (e) exclude any deferred Tax assets and deferred Tax liabilities, (f) take into account any estimated income Tax payments with respect any Pre-Closing Tax Period but excluding any refunds, (g) be calculated separately for income Taxes imposed in each jurisdiction and (h) in the case of a Straddle Tax Period, in accordance with Section 8.3 hereof.

"Adjustment Calculation" means an amount, which may be positive or negative, equal to (a) the excess of the Net Working Capital Calculation over the Estimated Net Working Capital, plus (b) the excess of the Closing Cash over the Estimated Cash, minus (c) the excess of the Closing Indebtedness over the Estimated Indebtedness, and minus (d) the excess of the Closing Transaction Expenses over the Estimated Transaction Expenses.

"Adjustment Escrow Amount" means an amount equal to $300,000.00.

"Adjustment Escrow Funds" means (a) the Adjustment Escrow Amount, plus (b) any accrued interest, dividends and other distributions thereon as provided in this Agreement or the Escrow Agreement.

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

"Affiliated Group" means any affiliated group within the meaning of Section 1504(a) of the Code, or any similar group defined under a similar provision of Law.

"Authorizations" shall mean, as to any Person, all licenses, permits, franchises, orders, accreditations, memberships, approvals, concessions, clearances, registrations, qualifications and other authorizations issued or granted to such Person under applicable Law (including any pending applications), by any Governmental Authority or any other Person.

"Books and Records" shall mean business records (in any form or medium), including all books, ledgers, files, reports, plans, records, manuals, sales and credit records, books of account, financial records, invoices, supplier lists, billing records, engineering records, drawings, blueprints, schematics, studies, surveys, reports, advertising and sales material, customer lists, customer records, test records, financing records, and personnel and payroll records.

"Business" means the business of omnichannel marketing and analytics related to digital advertising of pharmaceuticals. All of the foregoing services collectively, or any one service individually, shall be referred to herein as the "Business."

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the Laws of the State of Nevada or is a day on which banking institutions located in the State of Nevada are authorized or required by Law or other governmental action to close.

"Buyer Common Stock" means an aggregate number of shares of Common Stock of Buyer, par value $0.001 per share, equal to (i) the aggregate amount of the Management Investment Amount, divided by (ii) the volume-weighted average of the trading prices on the NASDAQ Capital Market on which Buyer Common Stock is listed for one (1) share of Buyer Common Stock for the five (5) consecutive trading days ending the trading day immediately preceding the Agreement Date, which shares of Buyer Common Stock shall be rounded up to the nearest whole number of shares of Buyer Common Stock (on an aggregate basis per holder of Buyer Common Stock), in lieu of receiving any amount of cash or fractional shares of Buyer Common Stock.

"CARES Act" means the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, March 27, 2020, as amended, and any administrative or other guidance published with respect thereto by any Governmental Authority, or any other Law intended to address the consequences of COVID-19.

"Cash" means, as of any date, any cash on hand, cash in bank or other accounts, readily marketable securities, and other cash-equivalent liquid assets of any nature as of such date, each as determined in accordance with GAAP. For the avoidance of doubt, (a) Cash will include the amount of deposits or other payments received by the Company but not yet credited to the bank accounts of the Company, to the extent that such deposits or other payments have reduced Net Working Capital, (b) Cash will exclude the amount of any outstanding checks or other payments issued by the Company but not yet deducted from the bank accounts of the Company, to the extent that such checks or other payments have increased Net Working Capital, and (c) Cash of the Company held in bank accounts of the Company will be calculated net of amounts overdrawn from such accounts by the Company.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Company Employee" means, collectively, each employee of the Company as of the Closing Date.

"Company Option" means an option (whether or not vested or exercisable) to purchase Common Stock that has been granted under the Company's 2012 and 2015 Stock Option Plans or otherwise.

"Common Stock" means the common stock of the Company, $0.001 par value per share.

"Company Stock" the Common Stock and Preferred Stock.

"Consent" means any approval, consent, ratification, novation, waiver, exemption or other authorization.

"Contract" means, whether written or oral, any note, bond, mortgage, indenture, contract, agreement, permit, license, lease, sublease, purchase order, sales order, arrangement or other commitment, obligation or understanding, express or implied, of any nature whatsoever to which a Person is a party or by which a Person or its assets or properties are bound, including any Government Contract.

"COVID-19" means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associate epidemic, pandemic or disease outbreaks.

"Credentials" means any logins, passwords, IDs, user IDs, account IDs, tokens, entitlements, certificates, authorization codes, keys, or any other assigned data or code for access to or use of any Third- Party Platform.

"Current Assets" shall have the meaning ascribed to it in the Accounting Methodology. For the avoidance of doubt, the Current Assets shall not include any Cash of the Company.

"Current Liabilities" shall have the meaning ascribed to it in the Accounting Methodology.

"Data Protection Requirements" means all applicable Laws and all regulations promulgated thereunder, applicable industry standards of any industry organization of or in which the Company is a member or otherwise participates or with which the Company purports to comply, and any and all applicable contractual and other obligations legally binding upon the Company, or that apply to the Business, in each case concerning Personal or Protected Information, Tracking Data, cybersecurity, surveillance, email communications or mobile or messaging communications or confidential or proprietary customer, partner (including suppliers, vendors, resellers, distributors, and any other third parties), user or end user data, including but not limited to, as and to the extent applicable to the Company or the Business: HIPAA, the Children's Online Privacy Protection Act of 1998 (COPPA), the Data Protection Acts 1988 to 2018, the General Data Protection Regulation (EU) 2016/679, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transaction Act, the Federal Trade Commission Act, the Privacy Act of 1974, PCI DSS, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, the TrustArc Privacy Certification Standards, the National Institute of Standards and Technology (NIST) Risk Management Framework, NIST Cybersecurity Framework, Building Security in Maturity Model (BSIMM) Framework, Cloud Security Alliance Cloud Controls Matrix (CCM), Open Web Application Security Project (OWASP), ISO/IEC 27017, 27001, 27701, the EU Data Protection Directive (Directive 95/46/EC) and any successor or replacement directive thereof (including the General Data Protection Regulation), state data security Laws, state health information Laws, state social security number protection Laws, state data breach notification Laws, state consumer protection Laws, any applicable Laws concerning minimum security requirements or requirements for website and mobile application privacy policies and practices, call or electronic monitoring or recording or any outbound communications (including outbound calling and text messaging, marketing or advertising materials, including unsolicited advertising, telemarketing and e-mail marketing, cookies, anti-SPAM, and communications Laws), and Laws relating to the use of any Credentials.

"Deemed Cash Amount" means an amount equal to aggregate exercise price of the Vested Company Options.

"Employee Benefit Plan" means any employee benefit plan as defined in Section 3(3) of ERISA, any "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code, "welfare benefit fund" within the meaning of Section 419 of the Code, or "qualified asset account" within the meaning of Section 419A of the Code, and any other plan, program, policy or Contract, whether formal or informal, whether or not set forth in writing, for or regarding bonuses, commissions, incentive compensation, employment, consulting, severance, vacation, deferred compensation, pensions, profit sharing, retirement, payroll savings, profits interests, stock options, stock purchases, stock awards, stock ownership, phantom stock, stock appreciation rights, equity or equity-based compensation, medical/dental expense payment or reimbursement, disability income or protection, sick pay, life insurance, self-insurance, death benefits, employee welfare or fringe benefits of any nature, including those benefiting current or former employees, consultants, independent contractors of directors (or their respective beneficiaries or dependents).

"Environmental Laws" means all applicable federal, state or local Laws and any implementing regulations or written agency guidance or policy as well as common laws relating to the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or protection of human health relating to the environment, including relating to (a) releases or threatened releases of Hazardous Materials, (b) the manufacture, processing, distribution, use, treatment, storage, transport or management of Hazardous Materials, (c) the management of asbestos or lead in buildings or other structures, or (d) the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act and the Occupational Health and Safety Act.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and all rulings and regulations promulgated thereunder.

"ERISA Affiliate" means any entity, trade or business (whether or not incorporated) that is part of the same controlled group with, common control with, part of an affiliated service group with, or part of another arrangement that includes, the Company or any ERISA Affiliate of the Company within the meaning of Code Section 414(b), (c), (m) or (o).

"Escrow Agent" means Acquiom Clearinghouse LLC, a Delaware limited liability company.

"Escrow Amount" means the sum of the Adjustment Escrow Amount and the Indemnification Escrow Amount.

"Escrow Funds" means the funds held in escrow by the Escrow Agent pursuant to this Agreement and the Escrow Agreement. The amount of Escrow Funds, at any given time, shall equal (a) the Escrow Amount, plus (b) any accrued interest, dividends and other distributions thereon as provided in the Escrow Agreement.

"Final Adjustment Calculation" means an amount, which may be positive or negative, equal to (a) the Final Net Working Capital Calculation minus the Estimated Net Working Capital, plus (b) the Final Cash minus the Estimated Cash, minus (c) the Final Indebtedness minus the Estimated Indebtedness and minus (d) the Final Transaction Expenses minus the Estimated Transaction Expenses.

"Fundamental Representations" means the following representations and warranties: Section 3.1: (Authorization); Section 3.2 (Ownership); Section 3.5 (Broker Fees); Section 4.1.1 (Organization and Authority), Section 4.2 (Authorization), Section 4.3 (Capitalization), the first sentence of Section 4.5 (Company Assets), Section 4.6 (Broker Fees), Section 4.11 (Tax Matters), Section 5.1 (Organization of Buyer), Section 5.2 (Authorization of Transaction), and Section 5.4 (Broker Fees).

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Government Contract" means any Contract between the Company, on the one hand, and (a) any Governmental Authority, including any administrative agreement or consent agreement with any Governmental Authority relating to compliance such Government Contract, (b) any prime contractor of a Governmental Authority in its capacity as a prime contractor, or (c) any subcontractor at any tier with respect to any Contract of a type described in clauses (a) or (b) above, on the other hand.

"Governmental Authority" means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any federal, state, local or foreign government or any subdivision, agency, instrumentality, authority (including any regulatory, administrative, and self-regulatory authority), department, commission, board or bureau thereof or any federal, state, local or foreign court, arbitrator or tribunal.

"Hazardous Materials" means any toxic or hazardous substance, material, or waste, and any other contaminant or pollutant, whether liquid, solid, semi-solid, sludge or gaseous, including chemicals, compounds, by-products, pesticides, asbestos containing materials, petroleum or petroleum products, and polychlorinated biphenyls, and any other material or substance, whether waste materials, raw materials or finished products regulated or governed by any Environmental Law.

"HIPAA" means collectively the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended and supplemented by the Health Information Technology for Clinical Health Act of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations, when each is effective and as each is amended from time to time.

"Indebtedness" means, with respect to any Person, means all Liabilities, contingent or otherwise, as obligor or otherwise, for or with respect to: (a) all obligations for borrowed money, including the principal, accreted value, accrued and unpaid interest, unpaid fees or expenses and other monetary obligations or other interest-bearing indebtedness, whether current or funded, secured or unsecured, (b) all obligations evidenced by a note, bond or debenture, (c) all obligations for deferred or installment purchase price of any property or services, (d) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired, including any "earnout" or similar payments or any noncompete payments, (e) all obligations secured by a purchase money mortgage or other Lien to secure all or part of the purchase price of property subject to such mortgage or Lien, (f) all obligations under leases which will have been or should be, in accordance with GAAP, recorded as finance leases (and not operating leases), (g) all obligations in respect of bankers' acceptances, letters of credit or similar credit transactions, (h) all obligations secured by Liens on property acquired, whether or not such obligations were assumed at the time of acquisition of such property, (i) any off balance sheet financial obligations in the nature of indebtedness, including synthetic leases and project financing, (j) the face value of any surety bonds, performance bonds or security deposits, (k) breakage or similar costs for interest rate hedges or early termination of any of the obligations of a type reflected above, (l) all obligations of a type referred to above which are directly or indirectly guaranteed by the Company or which the Company has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a credit against loss, (m) any Accrued Income Taxes, (n) all deferred payroll obligations of the Company, (o) all customer deposits and/or customer advances, (p) all deferred revenue, to the extent not already included within any of the foregoing, or (q) all other Liabilities that, in accordance with GAAP, should be classified upon the balance sheet of the Company as indebtedness. For purposes of this Agreement, Indebtedness (i) includes the aggregate amount of any accrued interest, accreted value, breakage costs, prepayment premiums or penalties related thereto, unpaid fees or other costs or expenses associated with the prepayment or termination of any Indebtedness, and (ii) excludes any amounts expressly included in Transaction Expenses or Net Working Capital or is otherwise included in the Adjustment Calculation.

"Indemnified Taxes" means, without duplication, any of the following Taxes (in each case, whether imposed, assessed, due or otherwise payable directly, as a successor or transferee, jointly or severally, pursuant to a contract or other agreement entered into (or assumed) by the Company on or prior to the Closing Date, or for any other reason and whether disputed or not): (a) any Tax in respect of the Company for any Pre-Closing Tax Period or portion of a Straddle Tax Period ending on or before the Closing Date (as determined under Section 8.3) to the extent not included in the Net Working Capital Calculation (as finally determined pursuant to Section 2.3); (b) any Tax that the Company is liable for (including under Section 1.1502-6 of the Treasury Regulations or any similar provision of state, local, or foreign applicable Laws) as a result of being a member of (or leaving) an Affiliated Group on or before the Closing Date; (c) any Transactional Taxes that are the responsibility of Securityholders pursuant to Section 8.4; (d) the Company's share of any Taxes arising from the payment of any Transaction Bonuses or option cancellation payments; (e) any Taxes resulting from the inclusion of any item of income in, or exclusion of any material item of deduction from, taxable income for any period (or any portion thereof) ending after the Closing Date as a result of any (i) installment sale or other transaction on or prior to the Closing Date, (ii) Tax Closing Agreement pursuant to Section 7121 of the Code or any corresponding provision of state, local or foreign Tax Law, entered into on or prior to the Closing Date (iii) accounting method change or agreement with any Taxing Authority, (iv) prepaid amount received on or prior to the Closing Date, (v) intercompany transaction or excess loss account described in Treasury Regulations under Section 1502 of the Code or any corresponding provision of state, local, or foreign Tax Law, (vi) income from discharge of indebtedness realized on or prior to the Closing Date, pursuant to Section 108(i) of the Code or any corresponding provision of state, local or foreign Tax Law, or (vii) election under Section 965(h) of the Code to pay the net tax liability under Section 965 in installments; (f) "applicable employment taxes" (as defined in Section 2302(d)(1) of the CARES Act) that the Company has elected to defer on or prior to the Closing Date pursuant to Section 2302 of the CARES Act (which amount, for the avoidance of doubt, shall not be less than zero and shall not include any offsets or reductions with respect to Tax refunds or overpayments of Tax) and any payroll Tax obligations that the Company has deferred (for example, by a failure to timely withhold, deposit or remit any such amounts in accordance with the applicable provisions of the Code and Treasury Regulations promulgated thereunder) pursuant to or in connection with the Payroll Tax Executive Order; (g) any payment required to be made after the Closing in respect of the failure to qualify to do business in any jurisdiction in which the Company's property is leased or operated by it or the nature of the business conducted by it makes such qualification necessary; and (h) any Taxes of the Securityholders.

"Indemnification Escrow Amount" means an amount equal to $285,000.00.

"Indemnification Escrow Funds" means (a) the Indemnification Escrow Amount, plus (b) any accrued interest, dividends and other distributions thereon as provided in this Agreement or the Escrow Agreement.

"Intellectual Property" means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing; (b) internet domain names, social media handle or page name; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, ideas, formulas, designs, devices, technology, know-how, research and development, inventions, methods, data, databases, processes, compositions and other trade secrets, whether or not patentable; (e) patents, inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, extensions and reexaminations, and all rights therein provided by multinational treaties or conventions; (f) Software; and (g) all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing.

"IT Assets" means all Software, hardware, firmware, networks, equipment, computer systems and connecting media and related systems and infrastructure used by the Company in support of its products, services, and business operations.

"Knowledge of the Company," "to the Company's Knowledge" and similar phrases means: the actual knowledge of Michael Weintraub, Scott Magnano, Frank Hicks, or Theresa Greco, after conducting a reasonable investigation.

"Law" means any statute, law (including common, statutory, civil, criminal, municipal, domestic, foreign or international law), ordinance, regulation, rule, code (including competition law or regulation, statutory instruments, guidance notes, circulars, directives, decisions, rules and regulations), Order, legislation, constitution, treaty, convention, judgment, decree, or other requirement or rule of law of any Governmental Authority.

"Liabilities" means any liability or obligation of any kind (including as related to Taxes), whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, determined or indeterminable, disputed or undisputed, liquidated or unliquidated, joint or several, secured or unsecured, vested or unvested, and whether due or to become due, regardless of when asserted, and whether or not the same is required to be accrued on financial statements.

"Lien" means and includes security interests, mortgages, liens, pledges, charges, easements, reservations, restrictions, clouds, servitudes, rights of way, options, rights of first refusal, community property interests, equitable interests, restrictions of any kind, including, without limitation, any voting or other transfer restrictions, conditional sale or other title retention agreements, any agreement to provide any of the foregoing and all other encumbrances, whether or not relating to the extension of credit or the borrowing of money, whether imposed by Contract, Law, equity or otherwise.

"Losses" or "Loss" of a Person means any and all losses, Liabilities, damages, claims, awards, judgments, Tax deficiencies, Taxes (including interest and penalties thereon), settlements, fines, penalties, assessments, costs and expenses (including the reasonable costs of investigation, remediation and professional fees, including those of attorneys, consultants and experts, any applicable state or local filing fees or organizational fees, and expenses paid in connection with the foregoing) suffered, sustained or incurred by such Person.

"Major Holders" means each of the following Shareholders of the Company: The Amended & Restated Weintraub Family Revocable Trust Dated May 21, 2012, Blue Capital Holdings, LLC, Sheldon Silverberg, Theresa Greco, Frank Hicks, Scott Magnano, FT Capital LLC, and Stillman Family Revocable Trust.

"Management Holders" means each of the following Securityholders of the Company: The Amended & Restated Weintraub Family Revocable Trust Dated May 21, 2012, Scott Magnano, Frank Hicks, Theresa Greco, Chad Gottfrid, Karin Chun Hayes, and Stacey Levas.

"Management Investment Amount" means such amounts, and to such parties, as set forth on Exhibit I.

"Management Investors" means Michael Weintraub, Frank Hicks, Theresa Greco, Chad Gottfrid, Karin Chun Hayes, and Stacey Levas.

"Material Adverse Effect" means any change, effect, event, circumstance, condition, occurrence or state of facts that, individually or in the aggregate, was, is or could reasonably be expected to become, materially adverse to: (a) the business, properties, assets, condition (financial or otherwise), prospects, Liabilities, operations, operating results, employee relations, or customer or supplier relations of the Company or (b) the ability of the Representative or Securityholders to consummate the Transactions on a timely basis, provided, however, that none of the following shall constitute, or shall be considered in determining whether there has occurred, and no event, circumstance, change or effect resulting from or arising out of any of the following shall constitute, a Material Adverse Effect: (i) changes in general economic, political, or financial market conditions (including the ability of Buyer to obtain financing to complete the Transactions); (ii) changes generally affecting the industry in which the Company primarily operates; (iii) effects of weather, acts of God, any attack, outbreak, hostility, terrorist activity, act or declaration of war or act of public enemies or other calamity, crisis or geopolitical event, (iv) changes in applicable Laws or accounting rules, including GAAP, (v) the failure of the Company to meet its financial projections; (vi) any change arising in connection with global health conditions (including any epidemic, pandemic, or disease outbreak (including the presence or spread of the virus SARS-CoV-2 or the disease COVID-19 caused by such virus (as each of the virus and the disease have been identified by the World Health Organization) or any future strains or variations or mutations thereof)), or any (A) shelter-in-place or stay at home order issued by any Governmental Authority, (B) cessation of commerce or closing of businesses, in each case, in response thereto or as a result thereof, (C) shortage of labor, (D) shortage or delay in receipt of raw materials or (E) delay in shipping, as applicable, or other force majeure events, including any material worsening of such conditions threatened or existing as of the Agreement Date, (vii) actions by or on behalf of the Company taken at the express written request of Buyer thereof; or (viii) changes arising solely from the announcement of this Agreement by reason of the identity of Buyer and its Affiliates or any written communication by or on behalf of Buyer regarding its plans or intentions with respect to the Company; provided that with respect to the foregoing clauses (i)-(vi) such changes do not have a disproportionate impact on the Company taken as a whole relative to other companies operating in similar industries in which the Company primarily operates.

"Net Working Capital" means, subject to and in accordance with the Accounting Methodology, for purposes of Section 2.3 herein, the difference between (a) Current Assets of the Company, and (b) Current Liabilities of the Company.

"Optionholder" means (a) prior to the Effective Time, a holder of a Company Option as of the applicable time, and (b) following or at the Effective Time, a holder of a Company Option as of immediately prior to the Effective Time, in each case, in its, his or her capacity as such.

"Order" means judgments, writs, decrees, compliance agreements, injunctions or judicial or administrative or arbitral orders or awards and legally binding determinations of any Governmental Authority, including any arbitrator.

"Ordinary Course of Business" means an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person.

"Owned Intellectual Property" means all of the Intellectual Property owned or purported to be owned by the Company.

"Payroll Tax Executive Order" means the Presidential Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, as issued on August 8, 2020, and including any administrative or other guidance published with respect thereto by any Governmental Authority (including IRS Notice 2020-65 and IRS Notice 2021-11).

"PCI DSS" means the Payment Card Industry Data Security Standard, issued by the Payment Card Industry Security Standards Council, as may be revised from time to time.

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

"Personal or Protected Information" means any information, in any form, that (a) is regulated by Laws or that is collected, used, disclosed, processed or retained by the Company, including information regarding the Business' customers, suppliers, employees and agents, that relates to an individual person such as an individual's name, address, age, gender, identification number, income, family status, citizenship, employment, assets, liabilities, source of funds, payment records, credit information, personal references and health records and submitted health care claims for reimbursements, (b) is governed, regulated or protected by one or more Data Protection Requirements, (c) is covered by PCI DSS, (d) the Company received from or on behalf of a customer or a supplier of the Company; or (e) is subject to a data security or confidentiality obligation.

"Preferred Stock" means the shares of preferred stock, $0.001 par value per share, designated as "Series A Convertible Preferred Stock".

"Proceeding" means audits, examinations, actions, suits, claims, demands, charges, complaints, litigation, reviews, hearings and investigations and legal, administrative or arbitration proceedings (including trademark oppositions and cancellation actions).

"Publicly Available Software" means each of: (a) any Software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux), or similar licensing and distribution models, and (b) any Software that requires as a condition of use, modification, and/or distribution of such software that such Software or other Software incorporated into, derived from, or distributed with such Software (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributed at no or minimal charge.

"Reserve Account" has the meaning set forth in Section 7.11.8.

"Reserve Amount" means an amount equal to $500,000.

"Restrictive Business Covenants" means any covenant that in any way purports to restrict the Company's business activity, location or limit the freedom of the Company to engage in any line of business, to compete with any Person or to employ or solicit, hire or engage the services of any Person, including most favored customer/nation or supplier provisions, distribution rights provisions, rights of first refusal or rights of first negotiation or similar rights, requirements to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions, exclusivity provisions or other limitations on the Company's right to sell, distribute or manufacture any product or service or to purchase or otherwise obtain Intellectual Property of any nature whatsoever.

"Securities" means any all shares of Company Stock and Company Options.

"Securityholder" means any Shareholder and/or Optionholder.

"Securityholder Pro Rata Share" means the proportion that the Merger Consideration payable to a given Securityholder bears to the Merger Consideration payable to all Securityholders pursuant to this Agreement, as set forth in the Payment Schedule.

"Shares" means all of the shares of the Company Stock issued and outstanding immediately before the Effective Time.

"Software" means computer software programs and software systems, including all databases, algorithms, compilations, tool sets, templates, compilers, higher level or "proprietary" languages, related documentation and materials, whether in source code, object code, or human readable form.

"Shareholder" means each holder of record of any Company Stock.

"Solvent" means, with respect to any Person, that (a) the assets of such Person, at a present fair saleable valuation, exceeds the sum of its debts (including contingent and unliquidated debts); (b) the present fair saleable value of the assets of such Person exceeds the amount that will be required to pay such Person's probable liability on its existing debts as they become absolute and matured; (c) such Person has adequate capital to carry on its business; and (d) such Person does not intend or believe it will incur debts beyond its ability to pay as such debts mature.

"Special Representations" means the following representations and warranties: Sections 4.25.4, 4.25.8, and 4.25.11 (Data Protection, Privacy Compliance, and Information Technology).

"Subsidiary" means any entity with respect to which a specified Person (or a Subsidiary thereof) owns a majority of the equity securities (including securities exercisable for such equity securities) or has the power to vote or direct the voting of sufficient securities to elect a majority of the board of directors (or any equivalent governing body).

"Target Net Working Capital" means $3,750,000.00.

"Tax" (and, with correlative meaning, "Taxes," "Taxable," and "Taxing") means any (a) federal, state, local or foreign income, net investment income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profits, environmental (including under Section 59A of the Code), customs, duties, real property, real property gains, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other tax of any kind whatsoever, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; and (b) liability for the payment of any amounts of the type described in clause (a) as a result of any express or implied obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

"Tax Returns" means all returns and reports, amended returns, information returns, statements, declarations, estimates, schedules, notices, notifications, forms, elections, certificates or other documents required to be filed or submitted to any Taxing Authority with respect to the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of, or compliance with, any Tax.

"Taxing Authority" means any domestic, foreign, federal, national, state, county or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi- governmental body exercising tax regulatory authority.

"Third-Party Platform" means any other Person's device, platform, application, operating system, website, networked physical object (including Internet of Things (IoT)), software as a service, platform as a service, infrastructure as a service, cloud service or similar service.

"Tracking Data" means (i) any information or data collected in relation to on-line, 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, (ii) 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 (iii) any device ID, device activity data or data collected from a networked physical object.

"Trade Regulations" means all Laws, and all Authorizations, in each case relating to the import or export of goods, technology, or services or trading embargoes or other trading restrictions, including the Export Administration Act, the Export Administration Regulations, the Trading with the Enemy Act, the International Economic Emergency Powers Act, and executive orders and regulations administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Transaction Bonus" means any bonuses, success fees, severance payments, change of control payments and any other amounts payable and unpaid at Closing (and not otherwise irrevocably waived or forfeited) to any Person by the Company or Securityholders in connection with the Transactions.

"Transaction Documents" means this Agreement and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party, pursuant to any of the foregoing.

"Transaction Expenses" means all fees, costs, charges, expenses and obligations unpaid at Closing that are incurred by the Company or any Securityholder in contemplation of, in connection with or relating to the preparation for, and consummation of, this Agreement, all other Transaction Documents and the Transactions, including (a) the preparation, negotiation and execution of this Agreement and all other agreements, certificates, instruments and documents delivered under the terms of this Agreement, all other Transaction Documents and the Transactions (including any due diligence review of the Company); (b) financial advisory and professional services provided by the Company's and Securityholders' bankers, counsel, brokers, consultants, accountants, advisors (financial or otherwise), agents and representatives; (c) Transaction Bonuses plus the Company's portion of any Taxes associated with the payment of such Transaction Bonuses; and (d) any employer payroll Taxes due on payments in respect of the Company Options.

"Transactions" means the transactions contemplated by the Transaction Documents.

"Vested Company Options" means, as of immediately prior to the Effective Time (after giving effect to any acceleration occurring prior to the Effective Time), outstanding Company Options to the extent such Company Options are then vested and exercisable.

Exhibit 10.2

JOINDER AND SUPPORT AGREEMENT

TO

AGREEMENT AND PLAN OF MERGER

The undersigned (the "Undersigned") is executing and delivering this Joinder and Support Agreement (this "Joinder"), dated as of the date set forth below, to the Agreement and Plan of Merger, dated as of October 11, 2023 (as the same has been or may hereafter be amended, amended and restated, supplemented, or otherwise modified, the "Merger Agreement"), by and among OptimizeRx Corporation, a Nevada corporation (the "Buyer"), Healthy Offers, Inc., a Nevada corporation (the "Company"), the Securityholders of the Company who become a party to the Agreement, including by means of a Joinder, and Michael Weintraub, not in his individual capacity, but solely in his capacity as the representative, agent and attorney-in-fact of the Securityholders and only for the express purposes provided in the Merger Agreement and for no other purpose (the "Representative"). All capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Merger Agreement.

A. Pursuant to the Merger Agreement, the Buyer, the Company, and the other parties named therein desire to effect the Merger at the Effective Time;

B. As a material inducement to the Buyer to enter into the Merger Agreement, the Company shall obtain and deliver to Buyer duly executed copies of Joinders from Shareholders, such that, after giving effect to the Joinders, the Shareholders who have executed the Merger Agreement or Joinders collectively own at least 88.6% of the outstanding Shares entitled to vote on the Merger Agreement; and

C. In order to induce the Buyer to consummate the Merger and the other transactions contemplated by the Merger Agreement, the Undersigned wishes to enter into this Joinder.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants, and agreements contained in this Joinder and the Merger Agreement, and intending to be legally bound hereby, the Undersigned hereby agrees as follows:

1. **Joinder.** In accordance with the terms of the Merger Agreement, the Undersigned unconditionally, irrevocably, and expressly agrees to join and become a party to the Merger Agreement as a Securityholder (and, more specifically, as a Shareholder) and to be bound by and comply with the terms and provisions of the Merger Agreement applicable to a Securityholder in the same manner as if the Undersigned were an original signatory to the Merger Agreement, including without limitation, (a) the representations of a Securityholder set forth in Article III of the Merger Agreement, (b) the indemnification provisions set forth in Article VII of the Merger Agreement, and (c) the provisions concerning the Securityholders' "Representative" set forth in Section 7.11 of the Merger Agreement. The Undersigned shall promptly execute and deliver any and all further documents and take such further action may be required of a Securityholder under the Merger Agreement.

2. **Representations, Warranties, and Covenants.** The Undersigned represents and warrants that: (a) the Undersigned has received and reviewed a copy of the Merger Agreement, including the Schedules and Exhibits thereto, a notice of appraisal rights prepared by the Company, and all other documents that the Undersigned has requested to enter into this Joinder; (b) this Joinder has been duly authorized, executed, and delivered by the Undersigned; and (c) this Joinder and the Merger Agreement each constitute the legal, valid, and binding obligation of the Undersigned, enforceable against the Undersigned in accordance with the terms hereof and thereof. The Undersigned hereby consents to and affirms: (i) all of the representations and warranties of a Securityholder set forth in Article III of the Merger Agreement; (ii) all of the covenants, indemnities, and agreements set forth in the Merger Agreement applicable to a Securityholder; and (iii) that the Undersigned shall perform all obligations of a Securityholder set forth in the Merger Agreement.

3. **Waiver and Release**. Effective as of the Effective Time, the Undersigned, on his/her/its own behalf, and on behalf of his/her/its heirs, administrators, Affiliates, successors and assigns (collectively, the "Releasing Persons"), hereby fully and irrevocably waives, releases and discharges each of the Company, the Surviving Company, and each of the officers, directors, managers, employees, agents, and representatives, and the successors and assigns of the foregoing (collectively, the "Released Persons"), from any and all Claims (as defined below) that such Releasing Person had, has, may have had at any time in the past until and including the Effective Time, or may have at any time in the future against any Released Person for or by reason of any matter, cause or thing whatsoever occurring at any time at or prior to the Closing with respect to the Company, directly or indirectly (collectively, the "Released Claims"), and none of the Releasing Persons shall seek to recover any amounts in connection therewith or thereunder from any of the Released Persons with respect to any such Released Claims; *provided, however*, that the Released Claims shall not include (a) any Claims that arise after the Effective Time, (b) any Claims to enforce the Undersigned's rights under the Merger Agreement or any other Transaction Document, and (c) rights to payment of such Undersigned's portion of the Merger Consideration (net of applicable taxes required to be withheld therefrom) pursuant to the Merger Agreement and this Agreement. Notwithstanding anything herein to the contrary, nothing in this Section 3 (i) affects any covenant or agreement of any Person set forth in the Merger Agreement or any other Transaction Document or (ii) relieves any Person from any indemnification, contribution, or other obligation arising under or pursuant to the Merger Agreement or any other Transaction Document. As used herein, "Claims" shall mean any and all claims, suits, demands, damages, judgments, losses, sums of money, accounts, actions, causes of action, contracts, covenants, obligations, debts, costs, expenses, attorneys' fees, liabilities of whatever kind or nature in law or equity, by statute or otherwise, whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, disclosed or undisclosed, liquidated or unliquidated, due or to become due, secured or unsecured, matured or unmatured or otherwise, which have existed or may have existed, or which do exist, through the Effective Time.

4. **Full Force of Merger Agreement.** Except as expressly supplemented hereby, the Merger Agreement shall remain in full force and effect in accordance with its terms.

5. **General Provisions.** This Joinder shall incorporate and be subject to the provisions of Article XI of the Merger Agreement, *mutatis mutandis*.

[Signature Page Follows]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

THE AMENDED AND RESTATED WEINTRAUB FAMILY REVOCABLE TRUST DATED MAY 21, 2012

By: /s/ Michael Weintraub
Name: Michael Weintraub
Title: CEO
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

BLUE CAPITAL HOLDINGS, LLC

By: /s/ Brian Casper
Name: Brian Casper
Title: Manger
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

H WARREN CLARK REVOCABLE TRUST DATED NOVEMBER 3, 2000 AND RESTATED ON MAY 25, 2010

By: /s/ H. Warren Clark
Name: H. Warren Clark
Title: Trustee
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

STILLMAN FAMILY REVOCABLE TRUST

By: /s/ Mitchell Stillman
Name: Mitchell Stillman
Title: Ttee
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

SHELDON SILVERBERG

By: /s/ Sheldon Silverberg
Name: Sheldon Silverberg
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11 2023.

FT CAPITAL LLC

By: /s/ Brian Casper
Name: Brian Casper
Title: Manger
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

IN WITNESS WHEREOF, the Undersigned has caused this Joinder to be executed as of October 11, 2023.

MITCHELL SCHWARTZMAN

By: /s/ Mitchell Schwartzman
Name: Mitchell Schwartzman
Date: 10/11/2023

Approved and Accepted:

OPTIMIZERX CORPORATION

By: /s/ William Febbo
Name: William Febbo
Title: Chief Executive Officer

[Signature Page To Joinder Agreement]

Exhibit 10.3

Execution Version

FINANCING AGREEMENT

Dated as of October 11, 2023
by and among

OPTIMIZERX CORPORATION,
as the Lead Borrower,

THE LENDERS FROM TIME TO TIME PARTY HERETO,
as Lenders,

and

BLUE TORCH FINANCE, LLC,
as Administrative Agent and Collateral Agent

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE, THE TERM LOANS ARE BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT. REQUESTS FOR INFORMATION REGARDING THE ORIGINAL ISSUE DISCOUNT ON THE TERM LOANS MAY BE DIRECTED TO THE CHIEF FINANCIAL OFFICER AT (248) 651-6568.

Table of Contents

SCHEDULE AND EXHIBITS

FINANCING AGREEMENT

Financing Agreement, dated as of October 11, 2023, by and among OptimizeRx Corporation, a Nevada corporation (the "Lead Borrower" and together with any other Person that becomes a "Borrower" hereunder pursuant to a Joinder Agreement, each a "Borrower" and collectively, the "Borrowers"), the lenders from time to time party hereto (each a "Lender" and collectively, the "Lenders"), Blue Torch Finance, LLC, a Delaware limited liability company ("Blue Torch"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Collateral Agent"), and Blue Torch, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Administrative Agent" and together with the Collateral Agent, each an "Agent" and collectively, the "Agents").

RECITALS

The Borrowers have asked the Lenders to extend credit to the Borrowers consisting of a term loan in the aggregate principal amount of $40,000,000. The proceeds of the term loan shall be used to fund, together with cash on hand of the Lead Borrower, the consideration for the Closing Date Merger. The Lenders are severally, and not jointly, willing to extend such credit to the Borrowers subject to the terms and conditions hereinafter set forth.

In consideration of the premises and the covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS; CERTAIN TERMS

Section 1.01 Definitions. As used in this Agreement, the following terms shall have the respective meanings indicated below:

"Account Debtor" means, with respect to any Person, each debtor, customer or obligor in any way obligated on or in connection with any Account of such Person.

"Acquired EBITDA" shall mean, with respect to any Person or business acquired pursuant to an Acquisition permitted hereunder for any period, the amount for such period of Consolidated EBITDA of any such Person or business so acquired (determined using such definitions as if references to the Lead Borrower and its Subsidiaries therein were to such Person or business), as calculated by the Borrowers.

"Acquisition" means the acquisition (whether by means of a merger, consolidation or otherwise) of all of the Equity Interests of any Person or all or substantially all of the assets of (or any division or business line of) any Person.

"Action" has the meaning specified therefor in Section 12.12.

"Additional Amount" has the meaning specified therefor in Section 2.09(a).

"Adjusted Term SOFR" means, for purposes of any calculation, an interest rate per annum equal to the sum of (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

"Administrative Agent" has the meaning specified therefor in the preamble hereto.

"Administrative Agent's Accounts" means one or more accounts designated by the Administrative Agent at a bank designated by the Administrative Agent from time to time as the accounts into which the Loan Parties shall make all payments to the Administrative Agent for the benefit of the Agents and the Lenders under this Agreement and the other Loan Documents.

"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. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the Board of Directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall any Agent or any Lender be considered an "Affiliate" of any Loan Party.

"After Acquired Property" has the meaning specified therefor in Section 6.01(a).

"Agency Fee" has the meaning specified therefor in the Fee Letter.

"Agent" and "Agents" have the respective meanings specified therefor in the preamble hereto.

"Agreement" means this Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

"Anti-Corruption Laws" means all Requirements of Law concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), the UK Bribery Act of 2010, and the anti-bribery and anti-corruption laws and regulations of those jurisdictions in which the Loan Parties do business.

"Anti-Money Laundering Laws" means all Requirements of Law concerning or relating to terrorism or money laundering, including, without limitation, the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the "Bank Secrecy Act," 31 U.S.C. §§ 5311-5332 and 12 U.S.C. §§ 1818(s), 1820(b) and §§ 1951-1959) and the rules and regulations thereunder, and any law prohibiting or directed against the financing or support of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B).

"Applicable Margin" means, as of any date of determination, with respect to the interest rate of (a) any Reference Rate Loan or any portion thereof, 7.50% per annum, and (b) any SOFR Loan or any portion thereof, 8.50% per annum.

"Applicable Premium" means as of the date of the occurrence of an Applicable Premium Trigger Event:

(i) during the period from and after the Closing Date up to and including the date that is the first anniversary of the Closing Date (the "First Period"), an amount equal to the Yield Maintenance Amount;

(ii) during the period after the First Period up to and including the date that is the second anniversary of the Closing Date (the "Second Period"), an amount equal to 2.0% of the aggregate principal amount of Term Loans subject to the Applicable Premium Trigger Event on such date;

(iii) during the period after the Second Period up to and including the date that is the third anniversary of the Closing Date, an amount equal to 1.0% of the aggregate principal amount of Term Loans subject to the Applicable Premium Trigger Event on such date; and

(iv) thereafter, zero;

"Applicable Premium Interest Rate" means 8.50% *per annum* plus the highest Adjusted Term SOFR in effect for a SOFR Loan on the date of the Applicable Premium Trigger Event (or, if no SOFR Loans are outstanding on the date of such Applicable Premium Trigger Event, 7.50% per annum plus the Reference Rate in effect on the date of such Applicable Premium Trigger Event); *provided* that if a Default or Event of Default (including pursuant to Section 9.01(g) or (h) of this Agreement) has occurred and is continuing on the date of the Applicable Premium Trigger Event, the Applicable Premium Interest Rate shall be 9.50% *per annum* plus the Reference Rate in effect on the date of such Applicable Premium Trigger Event.

"Applicable Premium Subject Amount" means the principal amount of Term Loans paid, required to be paid, or in the case of an Applicable Premium Trigger Event specified in clauses (b), (c) or (d) of the definition thereof, deemed paid on the date of the occurrence of the Applicable Premium Trigger Event.

"Applicable Premium Trigger Event" means

(a) any payment, redemption, repurchase, prepayment or repayment by any Loan Party of all, or any part, of the principal balance of any Term Loan for any reason (including, without limitation, any optional prepayment or mandatory prepayment other than (x) any prepayment made pursuant to Section 2.05(c)(i) and (y) any regularly scheduled amortization payment made pursuant to the first sentence of Section 2.03(a)) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(b) the acceleration of the Obligations for any reason, including, without limitation, acceleration in accordance with Section 9.01, including as a result of the commencement of an Insolvency Proceeding;

(c) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to any Agent, for the account of the Lenders in full or partial satisfaction of the Obligations; or

(d) the termination of this Agreement for any reason.

For the purposes of the definition of Applicable Premium Subject Amount, if an Applicable Premium Trigger Event occurs under clause (b), (c) or (d), then solely for the purposes of determining the amount of the Applicable Premium Subject Amount, the entire outstanding balance of the Term Loans shall be deemed to have been paid and all of the Commitments shall be deemed to have been terminated, in each case, on the date of such Applicable Premium Trigger Event.

"Assignment and Acceptance" means an assignment and acceptance entered into by an assigning Lender and an assignee, and accepted by the Collateral Agent (and the Administrative Agent, if applicable), in accordance with Section 12.07 hereof and substantially in the form of Exhibit B hereto or such other form acceptable to the Collateral Agent.

"Authorized Officer" means, with respect to any Person, the chief executive officer, chief operating officer, chief financial officer, treasurer or other financial officer performing similar functions, president or executive vice president of such Person.

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

"Benchmark" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event and a replacement of the applicable Benchmark has occurred pursuant to Section 2.09(f), then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.09(f).

"Blue Torch" has the meaning specified therefor in the preamble hereto.

"Board" means the Board of Governors of the Federal Reserve System of the United States (or any successor).

"Board Observer" has the meaning specified therefor in Section 7.01(p).

"Board of Directors" means with respect to (a) any corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board, (b) a partnership, the board of directors of the general partner of the partnership, (c) a limited liability company, the managing member or members or any controlling committee or board of directors of such company or the sole member or the managing member thereof, and (d) any other Person, the board or committee of such Person serving a similar function.

"Borrower" and "Borrowers" have the respective the meaning specified therefor in the preamble hereto.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close; provided that for purposes of determining the borrowing, payment or continuation of, or determination of interest rate on, SOFR Loans, "Business Day" shall exclude any day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that in accordance with GAAP are or should be included in "property, plant and equipment" or in a similar fixed asset account on its balance sheet.

"Capitalized Lease" means, with respect to any Person, any lease of (or other arrangement conveying the right to use) real or personal property by such Person as lessee that is required under GAAP to be capitalized on the balance sheet of such Person.

"Capitalized Lease Obligations" means, with respect to any Person, obligations of such Person and its Subsidiaries under Capitalized Leases, and, for purposes hereof, the amount of any such obligation shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case, maturing within six months from the date of acquisition thereof; (b) commercial paper, maturing not more than 270 days after the date of issue rated P 1 by Moody's or A 1 by Standard & Poor's; (c) certificates of deposit maturing not more than 270 days after the date of issue, issued by commercial banking institutions and money market or demand deposit accounts maintained at commercial banking institutions, each of which is a member of the Federal Reserve System and has a combined capital and surplus and undivided profits of not less than $500,000,000; (d) repurchase agreements having maturities of not more than 90 days from the date of acquisition which are entered into with major money center banks included in the commercial banking institutions described in clause (c) above and which are secured by readily marketable direct obligations of the United States Government or any agency thereof; (e) money market accounts maintained with mutual funds having assets in excess of $2,500,000,000, which assets are primarily comprised of Cash Equivalents described in another clause of this definition; (f) marketable tax exempt securities rated A or higher by Moody's or A+ or higher by Standard & Poor's, in each case, maturing within 270 days from the date of acquisition thereof and (g) in the case of any Foreign Subsidiary, cash and cash equivalents that are substantially equivalent in such jurisdiction to those described in clauses (a) through (f) above in respect of each country that is a member of the Organization for Economic Co-operation and Development.

"Cash Management Account" means each deposit account, securities account or commodities account of a Loan Party, other than an Excluded Account.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change of Control" means each occurrence of any of the following:

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) of beneficial ownership of more than 33% of the aggregate outstanding voting or economic power of the Equity Interests of the Lead Borrower;

(b) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of the Lead Borrower (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Lead Borrower was approved by a vote of at least a majority of the directors of the Lead Borrower then still in office who were either directors at the beginning of such period, or whose election or nomination for election was previously approved) cease for any reason to constitute a majority of the Board of Directors of the Lead Borrower; or

(d) the Lead Borrower shall cease to have direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Loan Party and each of its Subsidiaries (other than in connection with any transaction permitted pursuant to Section 7.02(c)(i)), free and clear of all Liens (other than Permitted Specified Liens).

"Channel Partnerships and Data Providers" means (x) providers that enable digital connectivity to the Borrower for communications with patients and doctors and (y) vendors of data that enable the Borrower to identify trends and make predictions using proprietary algorithms that result in digital communications with patients and doctors, respectively.

"Closing Date" has the meaning specified therefor in Section 5.02.

"Closing Date Merger" means the merger of Merger Sub with and into Healthy Offers pursuant to the Closing Date Merger Agreement, with Healthy Offers becoming a wholly-owned subsidiary of the Lead Borrower.

"Closing Date Merger Agreement" means the Agreement and Plan of Merger, to be dated as of the Closing Date, by and among *inter alia*, the Borrower and Healthy Offers.

"Collateral" means all of the property and assets and all interests therein and proceeds thereof now owned or hereafter acquired by any Person upon which a Lien is granted or purported to be granted by such Person as security for all or any part of the Obligations.

"Collateral Agent" has the meaning specified therefor in the preamble hereto.

"Collateral Agent Advances" has the meaning specified therefor in Section 10.08(a).

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" means a Compliance Certificate, substantially in the form of Exhibit E, duly executed by an Authorized Officer of the Lead Borrower.

"Connection Income Taxes" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"Consolidated Adjusted EBITDA" means, with respect to any Person for any period:

(a) the Consolidated EBITDA of such Person for such period,

plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) reasonable transaction fees and expenses incurred in connection with the negotiation, execution and delivery on the Agreement and the consummation on the Closing Date Merger to the extent set forth in a funds flow delivered to the Administrative Agent or approved by the Administrative Agent in its sole discretion,

(ii) reasonable fees, costs and expenses incurred hereunder or in connection with any amendments to or waivers or consents to this Agreement to the extent set forth in a funds flow delivered to the Administrative Agent or approved by the Administrative Agent in its sole discretion,

(iii) reasonable transaction fees and expenses incurred in connection with any Permitted Acquisition consummated or attempted to be consummated during such period (including travel and accounting expenses and financing fees) to the extent set forth in a funds flow delivered to the Administrative Agent or approved by the Administrative Agent in its sole discretion,

(iv) reasonably non-recurring integration consulting and advisory fees arising in connection within six (6) months of the closing of any transaction that is or would be a Permitted Acquisition approved by the Administrative Agent in its sole discretion,

(v) all non-cash charges, losses or expenses (or minus non-cash income or gain) included or deducted in calculating net income (or loss) for such period including, without limitation, any non-cash loss or expense (or income or gain) due to the application of FASB ASC 815-10 regarding hedging activity, FASB ASC 350 regarding impairment of goodwill and intangibles, FASB ASC 480-10 regarding accounting for financial instruments with debt and equity characteristics, FASB ASC No. 715 regarding post-retirement benefits, FASB ASC No. 805 regarding the accrual of earn-outs, non-cash foreign currency exchange losses (or minus gains) and non-cash expenses deducted as a result of any grant of capital stock, partnership interests, membership interests or other equity interests to employees, officers or directors, in each case, other than (i) any non-cash charge to the extent it represents an accrual or reserve for potential cash charges in any future period and (ii) any write down or impairment charge against accounts receivable or Inventory,

(vi) non-cash adjustments resulting from the application of purchase accounting or similar acquisition accounting under GAAP,

(vii) all net gains or losses resulting from currency translation gains or losses related to currency remeasurements of Indebtedness or other obligations (including any net loss or gain resulting from hedge agreements for currency exchange risk) and all foreign currency translation gains or losses for such period,

(viii) market rate compensation and reimbursement of expenses to non-management members of the board of directors of Lead Borrower in an amount not to exceed $500,000 in any Test Period,

(ix) to the extent covered by insurance under which the insurer has been properly notified (and has not rejected or denied insurance coverage) and the Lead Borrower has received or reasonably expects to receive proceeds of insurance within 180 days after such Test Period, expenses with respect to liability or casualty events or business interruption, and

(x) other extraordinary, unusual or non-recurring non-cash charges and extraordinary, unusual or non-recurring items (including cash items) in an amount not to exceed 5.0% of Consolidated EBITDA in any Test Period.

"Consolidated EBITDA" means, with respect to any Person for any period:

(a) the Consolidated Net Income of such Person for such period,

plus

(b) without duplication, the sum of the following amounts for such period to the extent deducted in the calculation of Consolidated Net Income for such period:

(i) any provision for United States federal income taxes or other taxes measured by net income,

(ii) Consolidated Net Interest Expense,

(iii) [reserved],

(iv) any depreciation and amortization expense,

(v) any aggregate net loss on the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(vi) any other non-cash expenditure, charge or loss for such period (other than any non-cash expenditure, charge or loss relating to write-offs, write-downs or reserves with respect to accounts and Inventory),

minus

(c) without duplication, the sum of the following amounts for such period to the extent included in the calculation of such Consolidated Net Income for such period:

(i) any credit for United States federal income taxes or other taxes measured by net income,

(ii) any gain from extraordinary items,

(iii) any aggregate net gain from the Disposition of property (other than accounts and Inventory) outside the ordinary course of business, and

(iv) any other non-cash gain, including any reversal of a charge referred to in clause (b)(vi) above by reason of a decrease in the value of any Equity Interest;

in each case, determined on a consolidated basis in accordance with GAAP.

There shall be included in determining Consolidated EBITDA for any Test Period, without duplication, the actual Acquired EBITDA (without any adjustments for cost savings, synergies or similar adjustments, and to the extent not subsequently sold, transferred, abandoned or otherwise disposed by the Lead Borrower or such Subsidiary) of any Person or business, or attributable to any property or asset, acquired by the Lead Borrower or any Subsidiary during such Test Period. Acquired EBITDA for purposes of determining Consolidated EBITDA for any Test Period shall include the portion of Acquired EBITDA for Test Periods prior to such Acquisition as if such Acquisition had occurred on the first day of the applicable Test Period.

For purposes of determining Consolidated EBITDA and subject to adjustments for any Acquired EBITDA after the Effective Date, Consolidated EBITDA and Consolidated Adjusted EBTIDA of Holdings and its Subsidiaries for each of the following months shall be stipulated as follows:

Month	**Consolidated EBITDA**
September 30, 2022	$ 1,877,934
October 31, 2022	$ 509,974
November 30, 2022	$ 998,790
December 31, 2022	$ 4,582,284
January 31, 2023	$ (582,783)
February 28, 2023	$ (724,954)
March 31, 2023	$ 554,239
April 30, 2023	$ 45,853
May 31, 2023	$ (504,845)
June 30, 2023	$ 1,685,076
July 31, 2023	$ (273,348)
August 31, 2023	$ 245,844

"Consolidated Net Income" means, with respect to any Person, for any period, the consolidated net income (or loss) of such Person and its Subsidiaries for such period; provided, however, that the following shall be excluded: (a) the net income of any other Person in which such Person or one of its Subsidiaries has a joint interest with a third-party (which interest does not cause the net income of such other Person to be consolidated into the net income of such Person), except to the extent of the amount of dividends or distributions paid to such Person or Subsidiary, (b) the net income of any Subsidiary of such Person that is, on the last day of such period, subject to any restriction or limitation on the payment of dividends or the making of other distributions, to the extent of such restriction or limitation, and (c) the net income of any other Person arising prior to such other Person becoming a Subsidiary of such Person or merging or consolidating into such Person or its Subsidiaries.

"Consolidated Net Interest Expense" means, with respect to any Person for any period, (a) gross interest expense of such Person and its Subsidiaries for such period determined on a consolidated basis and in accordance with GAAP (including, without limitation, interest expense paid to Affiliates of such Person), less (b) the sum of (i) interest income for such period and (ii) gains for such period on Hedging Agreements (to the extent not included in interest income above and to the extent not deducted in the calculation of gross interest expense), plus (c) the sum of (i) losses for such period on Hedging Agreements (to the extent not included in gross interest expense) and (ii) the upfront costs or fees for such period associated with Hedging Agreements (to the extent not included in gross interest expense), in each case, determined on a consolidated basis and in accordance with GAAP.

"Contingent Indemnity Obligations" means any Obligation constituting a contingent, unliquidated indemnification obligation of any Loan Party, in each case, to the extent (a) such obligation has not accrued and is not yet due and payable and (b) no claim has been made or is reasonably anticipated to be made with respect thereto.

"Contingent Obligation" means, with respect to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of a primary obligor, (b) the obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement, and (c) any obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term "Contingent Obligation" shall not include any product warranties extended in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation with respect to which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"Contractual Obligation" means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control Agreement" means, with respect to any deposit account, any securities account, commodity account, securities entitlement or commodity contract, an agreement, in form and substance satisfactory to the Collateral Agent, among the Collateral Agent, the financial institution or other Person at which such account is maintained or with which such entitlement or contract is carried and the Loan Party maintaining such account, effective to grant "control" (as defined under the applicable UCC) over such account to the Collateral Agent.

"Controlled Investment Affiliate" means, as to any Person, any other Person that (a) directly or indirectly, is in control of, is controlled by, or is under common control with, such Person and (b) is organized by such Person primarily for the purpose of making equity or debt investments in one or more companies. For purposes of this definition, "control" of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Current Value" has the meaning specified therefor in Section 7.01(m).

"Debtor Relief Law" means the Bankruptcy Code and any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief law of the United States or other applicable jurisdiction from time to time in effect.

"Default" means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"DIP Financing" has the meaning specified therefor in Section 12.02(g).

"DIP Lender" and "DIP Lenders" have the respective meanings specified therefor in Section 12.02(g).

"Disbursement Letter" means a disbursement letter, in form and substance satisfactory to the Collateral Agent, by and among the Loan Parties, the Agents, the Lenders and the other Persons party thereto, and the related funds flow memorandum describing the sources and uses of all cash payments in connection with the transactions contemplated to occur on the Closing Date.

"Disposition" means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, "Disposition" shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or (c) the early termination, assignment or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

"Disqualified Equity Interests" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interest into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations), (b) is redeemable at the option of the holder thereof, in whole or in part, (c) provides for the scheduled payments of dividends or distributions in cash, or (d) is convertible into or exchangeable for (i) Indebtedness or (ii) any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d), prior to the date that is six months after the Final Maturity Date.

"Dollar," "Dollars" and the symbol "$" each means lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"Effective Date" has the meaning specified therefor in Section 5.01.

"Employee Plan" means an employee benefit plan within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan), regardless of whether subject to ERISA, that any Loan Party or any of its ERISA Affiliates maintains, sponsors or contributes to or is obligated to contribute to.

"Environmental Claim" means any action, suit, complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication, from any Person or Governmental Authority relating to or arising out of any threatened, alleged or actual (a) violation of, non-compliance with, or liability under, any Environmental Law, or (b) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

"Environmental Law" means any Requirement of Law relating to, regulating or governing (i) the pollution or protection of the environment, any environmental media, natural resources, human health or safety, or (ii) the manufacture, use, handling, processing, distribution, labeling, generation, transportation, storage, treatment, Release, threatened Release, disposal or arranging for the disposal of, or exposure to, any Hazardous Materials.

"Environmental Liability" means all liabilities (contingent or otherwise, known or unknown), monetary obligations, losses (including monies paid in settlement), damages, natural resource damages, costs and expenses (including all reasonable fees, costs, client charges and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest arising directly or indirectly as a result of, from, or based upon (a) any Environmental Claim, (b) any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, (c) any actual, alleged or threatened Release of, or exposure to, Hazardous Materials, (d) any Remedial Action, (f) any adverse environmental condition or (g) any contract, agreement or other arrangement pursuant to which liability is assumed or imposed contractually or by operation of law with respect to any of the foregoing (a)-(f).

"Environmental Lien" means any Lien in favor of any Governmental Authority arising out of any Environmental Liability.

"Environmental Permit" means any permit, license, authorization, approval, registration or entitlement required by or issued pursuant to any Environmental Law or by any Governmental Authority pursuant to Environmental Law.

"Equity Interests" means (a) all shares of capital stock (whether denominated as common stock or preferred stock), equity interests, beneficial, partnership or membership interests, joint venture interests, participations or other ownership or profit interests in or equivalents (regardless of how designated) of or in a Person (other than an individual), whether voting or non-voting and (b) all securities convertible into or exchangeable for any of the foregoing and all warrants, options or other rights to purchase, subscribe for or otherwise acquire any of the foregoing, whether or not presently convertible, exchangeable or exercisable.

"Equity Issuance" means either (a) the sale or issuance by any Loan Party or any of its Subsidiaries of any shares of its Equity Interests or (b) the receipt by the Lead Borrower of any cash capital contributions.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar import, and regulations thereunder, in each case, as in effect from time to time. References to sections of ERISA shall be construed also to refer to any successor sections.

"ERISA Affiliate" means, with respect to any Person, any trade or business (whether or not incorporated) which is a member of a group of which such Person is a member and which would be deemed to be a "controlled group" or under "common control" within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code or Sections 4001(a)(14) or 4001(b)(1) of ERISA.

"ERISA Event" means (a) the occurrence of a Reportable Event with respect to any Pension Plan; (b) the failure to meet the minimum funding standards of Section 412 or 430 of the Internal Revenue Code or Section 302 or 303 of ERISA with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA) or the failure to make a contribution or installment required under Section 412 or Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (c) a determination that any Pension Plan is, or is expected to be, in "at risk" status (as defined in Section 430 of the Internal Revenue Code or Section 303 of ERISA); (d) a determination that any Multiemployer Plan is, or is expected to be, in "critical" or "endangered" status under Section 432 of the Internal Revenue Code or Section 305 of ERISA; (e) the filing of a notice of intent to terminate a Pension Plan or the treatment of an amendment to a Pension Plan as a termination under Section 4041 of ERISA; (f) the withdrawal by any Loan Party or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to any Loan Party or any of its ERISA Affiliates pursuant to Section 4063 or 4064 of ERISA; (g) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition that would reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (h) the imposition of liability on any Loan Party or any of its ERISA Affiliates pursuant to Section 4062(e) or 4069(a) of ERISA or by reason of the application of Section 4212(c) of ERISA; (i) the withdrawal of any Loan Party or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan or the receipt by any Loan Party or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (j) the occurrence of an act or omission which could give rise to the imposition on any Loan Party or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Sections 4975 or 4971 of the Internal Revenue Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Employee Plan; (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent, upon any Loan Party or any of its ERISA Affiliates; (l) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any such Pension Plan (or such other Employee Plan) to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; (m) the imposition on any Loan Party of any material fine, excise tax or penalty with respect to any Pension Plan or Multiemployer Plan resulting from any noncompliance with any Requirements of Law; or (n) the imposition of a Lien pursuant to Section 430(k) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"Erroneous Distribution" has the meaning specified therefor in Section 10.18.

"Event of Default" has the meaning specified therefor in Section 9.01.

"Excess Cash Flow" means, with respect to any Person for any period, (a) Consolidated EBITDA of such Person and its Subsidiaries for such period, less (b) the sum of, without duplication, (i) all cash principal payments (excluding any principal payments made pursuant to Section 2.05(c)) on the Loans made during such period, and all cash principal payments on Indebtedness (other than intercompany indebtedness) of such Person or any of its Subsidiaries during such period to the extent such other Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement (but, in the case of revolving loans, only to the extent that the revolving credit commitment in respect thereof is permanently reduced by the amount of such payments), in each case, to the extent financed with Internally Generated Cash (ii) all Consolidated Net Interest Expense to the extent paid or payable in cash during such period and to the extent financed with Internally Generated Cash, (iii) the cash portion of Capital Expenditures made by such Person and its Subsidiaries during such period to the extent permitted to be made under this Agreement and to the extent financed with Internally Generated Cash, (iv) all scheduled loan servicing fees and other similar fees in respect of Indebtedness of such Person or any of its Subsidiaries paid in cash during such period, to the extent such Indebtedness is permitted to be incurred, and such payments are permitted to be made, under this Agreement, (v) income taxes paid in cash by such Person and its Subsidiaries for such period, (vi) all cash expenses, cash charges, cash losses and other cash items that were added back in the determination of Consolidated EBITDA for such period and (vii) the excess, if any, of Working Capital at the end of such period over Working Capital at the beginning of such period (or minus the excess, if any, of Working Capital at the beginning of such period over Working Capital at the end of such period).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Excluded Account" means any deposit account specifically and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of any Loan Party's employees but only to the extent of funds on deposit in such accounts for the immediately succeeding payroll period.

"Excluded Subsidiary" means (a) any Immaterial Subsidiary and (b) any Subsidiary that is restricted or prohibited by applicable law from guaranteeing the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee unless, such consent, approval, license or authorization has been received.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.09, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Section 2.09(d) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

"Extraordinary Receipts" means any cash received by the Lead Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.05(c)(ii) or (iii) hereof), including, without limitation, (a) foreign, United States, state or local tax refunds, (b) pension plan reversions, (c) proceeds of insurance (other than to the extent such insurance proceeds are (i) immediately payable to a Person that is not the Lead Borrower or any of its Subsidiaries in accordance with applicable Requirements of Law or with Contractual Obligations entered into in the ordinary course of business or (ii) received by the Lead Borrower or any of its Subsidiaries as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (d) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (e) condemnation awards (and payments in lieu thereof), (f) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Lead Borrower or any of its Subsidiaries or (ii) received by the Lead Borrower or any of its Subsidiaries as reimbursement for any costs previously incurred or any payment previously made by such Person) and (g) any purchase price adjustment received in connection with any purchase agreement including, without limitation, the Merger Agreement, *provided* that Extraordinary Receipts shall not include any amount of income tax refunds received by Healthy Offers on account of any estimated tax payments made prior to the Closing Date, in an amount not exceed $1,000,000, so long as (w) such tax refund is paid to the Persons that were shareholders of Healthy Offers immediately prior to the Closing Date Merger, (x) no Default or Event of Default has occurred and is continuing as of the date of receipt of such amounts and the day of payment of such amounts to the former shareholders of Healthy Offers, (y) the payment is made within fifteen days of the receipt of the tax refund and (z) the payment is made in accordance with Section 6.17 of the Merger Agreement.

"Facility" means the real property identified on Schedule 1.01(B) and any New Facility hereafter acquired by the Lead Borrower or any of its Subsidiaries, including, without limitation, the land on which each such facility is located, all buildings and other improvements thereon, and all fixtures located thereat or used in connection therewith.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"FATCA" means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal, tax or regulatory legislation, rules or official practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of Sections 1471 through 1474 of the Internal Revenue Code and the Treasury Regulations thereunder.

"FCPA" has the meaning specified therefor in the definition of Anti-Corruption Laws.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Fee Letter" means the fee letter, dated as of the date hereof, among the Borrowers and the Administrative Agent.

"Final Maturity Date" means the fourth (4^{th}) anniversary of the Closing Date.

"Financial Statements" means, collectively, the (i) Financial Statements (Healthy), (ii) the Financial Statements (OptimizeRx), and (iii) Financial Statements (Pro Forma).

"Financial Statements (Healthy)" means (a) the audited consolidated balance sheet of the Company for the Fiscal Years ended December 31, 2021 and December 31, 2022, and the related consolidated statement of operations, changes in stockholders' equity and cash flows for the Fiscal Years then ended, and (b) the unaudited consolidated balance sheet of the Company as of August 31, 2023, and the related consolidated statement of operations and cash flows for the eight month period ended August 31, 2023.

"Financial Statements (OptimizeRx)" means (a) the audited consolidated balance sheet of the Lead Borrower and its Subsidiaries (immediately prior to the Closing Date Merger) for the Fiscal Year ended December 31, 2022, and the related consolidated statement of operations, stockholders' equity and cash flows for the Fiscal Year then ended, and (b) the unaudited consolidated balance sheet of the Lead Borrower and its Subsidiaries (immediately prior to the Closing Date Merger) as of August 31, 2023, and the related consolidated statement of operations and cash flows for the eight month period ended August 31, 2023.

"Financial Statements (Pro Forma)" means the unaudited pro forma consolidated balance sheet of the Lead Borrower and its Subsidiaries as of June 30, 2023, prepared after giving effect to the Closing Date Merger as if the Closing Date Merger had occurred on such date.

"Financial Statements (Projections)" means the pro forma combined financial projection of revenue, gross profit, operating expenses, EBITDA, cash flows and certain balance sheet items for the fiscal years 2023-2027 provided by the Lead Borrower to Agent on or about September 24, 2023.

"Fiscal Year" means the fiscal year of the Lead Borrower and its Subsidiaries ending on December 31 of each year.

"Floor" means 3.00% per annum.

"Foreign Plan" means any employee benefit plan, program, policy, arrangement or agreement maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party that is subject to any Requirements of Laws other than, or in addition to, the laws of the United States or any state thereof or the laws of the District of Columbia.

"Foreign Subsidiary" means any Subsidiary of the Lead Borrower that is not a Domestic Subsidiary.

"Funding Losses" has the meaning specified therefor in Section 2.08.

"GAAP" means generally accepted accounting principles in effect from time to time in the United States, applied on a consistent basis, provided that for the purpose of Section 7.03 hereof and the definitions used therein, "GAAP" shall mean generally accepted accounting principles in effect on the date hereof and consistent with those used in the preparation of the Financial Statements, provided, further, that if there occurs after the date of this Agreement any change in GAAP that affects in any respect the calculation of any covenant contained in Section 7.03 hereof, the Collateral Agent and the Lead Borrower shall negotiate in good faith amendments to the provisions of this Agreement that relate to the calculation of such covenant with the intent of having the respective positions of the Lenders and the Borrowers after such change in GAAP conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the covenants in Section 7.03 hereof shall be calculated as if no such change in GAAP has occurred.

"Governing Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization, and the operating agreement; (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture, declaration or other applicable agreement or documentation evidencing or otherwise relating to its formation or organization, governance and capitalization; and (d) with respect to any of the entities described above, any other agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization.

"Governmental Authority" means any nation or government, any foreign, Federal, state, territory, provincial, city, town, municipality, county, local or other political subdivision thereof or thereto and any department, commission, board, bureau, instrumentality, agency or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Government Sponsored Health Care Program" means any health benefit program that is sponsored by a Governmental Authority, including but not limited to the Medicare Program (Title XVIII of the Social Security Act), the TRICARE Program (10 U.S.C. § 1071 et seq.), the Medicaid Program (Title XIX of the Social Security Act) or any state health care program.

"Guaranteed Obligations" has the meaning specified therefor in Section 11.01.

"Guarantor" means each Person which guarantees, pursuant to Section 7.01(b) or otherwise, all or any part of the Obligations.

"Guaranty" means (a) the guaranty of each Guarantor party hereto contained in Article XI hereof and (b) each other guaranty, in form and substance satisfactory to the Collateral Agent, made by any other Guarantor in favor of the Collateral Agent for the benefit of the Agents and the Lenders guaranteeing all or part of the Obligations.

"Hazardous Material" means any element, material, substance, waste, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic or hazardous substance, hazardous waste, universal waste, special waste, or solid waste or is otherwise characterized by words of similar import under any Environmental Law or that is regulated under, or for which liability or standards of care are imposed, pursuant to any Environmental Law, including, without limitation, petroleum, polychlorinated biphenyls; asbestos-containing materials, lead or lead-containing materials, urea formaldehyde-containing materials, radioactive materials, radon, per- and polyfluoroalkyl substances and mold.

"Healthy Offers" means Healthy Offers, Inc., a Nevada corporation.

"Hedging Agreement" means any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation executed in connection with any such agreement or arrangement.

"Health Care Laws" means all Requirements of Law applicable to the business of any Loan Party relating to health care regulatory matters, as well as the privacy and security of medical information, including without limitation: (a) Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 et seq. (the Medicare statute), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 (the Medicaid statute), and any other federal and state Law imposed in connection with a Payment Program; (b) all federal, state, and local Laws related to health care fraud and abuse, patient inducement, and the solicitation or acceptance of improper incentives involving persons operating in the health care industry, including the U.S. Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), the U.S. Civil False Claims Act (31 U.S.C. Sections 3729 et seq.), the Medicare Program Laws at Title XVIII of the Social Security Act (42 U.S.C. §§ 1395 et seq.), Sections 1320a-7, 1320a-7a, and 1320a-7b of Title 42 of the United States Code, the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801- 3812), the Anti-Kickback Act of 1986 (41 U.S.C. §§ 51-58), the Federal Health Care Fraud Law (18 U.S.C. § 1347) and other federal and/or state Laws regarding financial relationships with referral sources, the submission of false claims, and false representations; (c) all state and federal Laws governing electronic prescriptions (including federal regulations at 21 C.F.R. Parts 1300, 1304, 1306 and 1311); (d) the Federal Food, Drug, and Cosmetic Act of 1938, as amended (21 U.S.C. 321, et seq.); (e) the Public Health Service Act of 1944; (f) Laws relating to TRICARE (including 10 U.S.C. § 1071); (g) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; (h) any state insurance, health maintenance organization or managed care Laws (including Laws relating to Medicaid programs); (i) the so-called federal "sunshine" law or Open Payments law (42 U.S.C. § 1320a-7h), as well as corollary state Laws governing disclosure of payments by pharmaceutical or medical device manufacturers to health care professionals; (j) the American Recovery and Reinvestment Act of 2009, the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq., as amended by the Health Care and Education Reconciliation Act of 2010 (42 U.S.C. § 1305 et seq.), the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) (Pub. L. No. 114-10), as amended; (k) the 21st Century Cures Act (Pub. L. No. 114-255) and its implementing regulations; (l) all Privacy Obligations, including without limitation HIPAA, TCPA, and CAN-SPAM; (m) all Requirements of Law related to the corporate practice of medicine or other health care professions and health care professional licensure and scope of practice; and (n) each of their state, local, foreign and international counterparts or equivalents, and their implementing regulations or rules, and in each case any formal applicable guidance documents promulgated thereunder.

"Highest Lawful Rate" means, with respect to any Agent or any Lender, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to such Agent or such Lender which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act and any and all rules or regulations promulgated from time to time thereunder, including 45 C.F.R. Parts 160 – 164, as amended from time to time.

"Holdout Lender" has the meaning specified therefor in Section 12.02(c).

"Immaterial Subsidiary" means, at any time, any Subsidiary that (i) contributed 2.5% or less of the Consolidated EBITDA of the Lead Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered, (ii) contributed 2.5% or less of the revenues of the Lead Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered, and (iii) had assets representing 2.5% or less of the total consolidated assets of the Lead Borrower and its Subsidiaries on the last day of the most recently ended period for which financial statements have been delivered; provided, if at any time and from time to time after the Effective Date, Immaterial Subsidiaries comprise in the aggregate more than 5.0% of the Consolidated EBITDA of the Lead Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered, or more than 5.0% of the revenues of the Lead Borrower and its Subsidiaries for the most recently ended period for which financial statements have been delivered or more than 5.0% of the consolidated assets of the Lead Borrower and its Subsidiaries as of the end of the most recently ended period for which financial statements have been delivered, then the Lead Borrower shall, not later than thirty days after the date by which financial statements for such period are required to be delivered (or such longer period as the Administrative Agent may agree in its sole discretion), designate in writing to the Administrative Agent that one or more of such Subsidiaries is no longer an Immaterial Subsidiary for purposes of this Agreement to the extent required such that the foregoing condition ceases to be true. As of the Effective Date, the Immaterial Subsidiaries are listed on Schedule 1.01(B).

"Indebtedness" means, with respect to any Person, without duplication, (a) all indebtedness of such Person for borrowed money; (b) all obligations of such Person for the deferred purchase price of property or services (other than trade payables or other accounts payable incurred in the ordinary course of such Person's business and not outstanding for more than 90 days after the date such payable was created and any earn-out, purchase price adjustment or similar obligation until such obligation appears in the liabilities section of the balance sheet of such Person); (c) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or upon which interest payments are customarily made; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Capitalized Lease Obligations of such Person; (f) all obligations and liabilities, contingent or otherwise, of such Person, in respect of letters of credit, acceptances and similar facilities; (g) all obligations and liabilities, calculated on a basis satisfactory to the Collateral Agent and in accordance with accepted practice, of such Person under Hedging Agreements; (h) all monetary obligations under any receivables factoring, receivable sales or similar transactions and all monetary obligations under any synthetic lease, tax ownership/operating lease, off-balance sheet financing or similar financing; (i) all Contingent Obligations; (j) all Disqualified Equity Interests; and (k) all obligations referred to in clauses (a) through (j) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness. The Indebtedness of any Person shall include the Indebtedness of any partnership of or joint venture in which such Person is a general partner or a joint venturer.

"Indemnified Matters" has the meaning specified therefor in Section 12.15.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

"Indemnitees" has the meaning specified therefor in Section 12.15.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of any Debtor Relief Law.

"Intellectual Property" has the meaning specified therefor in the Security Agreement.

"Intellectual Property Contracts" means all agreements concerning Intellectual Property, including without limitation license agreements, technology consulting agreements, confidentiality agreements, co-existence agreements, consent agreements and non-assertion agreements.

"Intercompany Note" means an Intercompany Note and Allonge made by the Lead Borrower and its Subsidiaries in favor of the Collateral Agent for the benefit of the Agents and the Lenders, in form and substance reasonably satisfactory to the Collateral Agent.

"Interest Period" means, with respect to each SOFR Loan, a period commencing on the date of the making of such SOFR Loan (or the continuation of a SOFR Loan or the conversion of a Reference Rate Loan to a SOFR Loan) and ending 1 months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon Adjusted Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is one month after the date on which the Interest Period began, as applicable, and (e) the Lead Borrower may not elect an Interest Period which will end after the Final Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"Internally Generated Cash" means cash of the Lead Borrower and its Subsidiaries not constituting (a) proceeds of the issuance of (or contributions in respect of) Equity Interests of the Lead Borrower, (b) proceeds of the incurrence of Indebtedness (other than (i) intercompany Indebtedness funded from Internally Generated Cash of the creditor company or (ii) extensions of credit under any other revolving credit or similar facility), and (c) proceeds of Dispositions and Extraordinary Receipts.

"Inventory" means, with respect to any Person, all goods and merchandise of such Person leased or held for sale or lease by such Person, including, without limitation, all raw materials, work-in-process and finished goods, and all packaging, supplies and materials of every nature used or usable in connection with the shipping, storing, advertising or sale of such goods and merchandise, whether now owned or hereafter acquired, and all such other property the sale or other disposition of which would give rise to an Account or cash.

"Investment" means, with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding Accounts arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness (including, any bonds, notes, debentures or other debt securities), Equity Interests, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), (b) the purchase or ownership of any futures contract or liability for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or (c) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.

"Joinder Agreement" means a Joinder Agreement, substantially in the form of Exhibit A-1, duly executed by a Subsidiary of a Loan Party made a party hereto pursuant to Section 7.01(b).

"Joinder and Assumption Agreement" means a Joinder and Assumption Agreement in the form of Exhibit A-2, duly executed by the Company, Merger Sub and the Agents.

"Lease" means any lease, sublease or license of, or other agreement granting a possessory interest in, real property to which any Loan Party or any of its Subsidiaries is a party as lessor, lessee, sublessor, sublessee, licensor or licensee.

"Lender" has the meaning specified therefor in the preamble hereto.

"Leverage Ratio" means, with respect to any Person and its Subsidiaries for any period, the ratio of (a) all Indebtedness described in clauses (a), (b), (c), (d), (e) and (f) in the definition thereof of such Person and its Subsidiaries as of the end of such period, less an amount, which shall not exceed $7,500,000, equal to the amount of Qualified Cash as of the end of such period to (b) Consolidated Adjusted EBITDA of such Person and its Subsidiaries for such period.

"Lien" means any mortgage, deed of trust, deed to secure debt, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement, any Capitalized Lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

"Liquidity" means Qualified Cash less any Indebtedness of the Lead Borrower and its Subsidiaries in excess of $1,000,000 that is of the type specified in clause (b) of the definition of Indebtedness.

"Loan" means the Term Loan made by an Agent or a Lender to the Borrowers pursuant to Article II hereof.

"Loan Account" means an account maintained hereunder by the Administrative Agent on its books of account at the Payment Office, and with respect to the Borrower, in which the Borrowers will be charged with all Loans made to, and all other Obligations incurred by, the Borrowers.

"Loan Document" means this Agreement, the Merger Agreement Collateral Assignment, the Merger Agreement R&W Collateral Assignment, any Control Agreement, the Disbursement Letter, the Fee Letter, any Guaranty, the Intercompany Note, any Joinder Agreement, any Mortgage, any Security Agreement, the VCOC Management Rights Agreement, any Perfection Certificate and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Loan or any other Obligation.

"Loan Party" means any Borrower and any Guarantor.

"Material Adverse Effect" means a material adverse effect on any of (a) the operations, assets, liabilities, financial condition or prospects of the Loan Parties taken as a whole, (b) the ability of the Loan Parties taken as a whole to perform any of their obligations under any Loan Document, (c) the legality, validity or enforceability of this Agreement or any other Loan Document, (d) the rights and remedies of any Agent or any Lender under any Loan Document, or (e) the validity, perfection or priority of a Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on Collateral having a fair market value in excess of $2,500,000.

"Material Contract" means, with respect to any Person, (a) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $2,500,000 or more in any Fiscal Year (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days' notice without penalty or premium) and (b) all other contracts or agreements as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

"Merger Agreement" means the Agreement and Plan of Merger, dated as of October 11, 2023, by and among the Company, Healthy Offers, the securityholders of the Company party thereto from time to time and Michael Weintraub, as the representative, agent and attorney-in-fact of the securityholders (in such capacity the "Representative"), as in effect on the date hereof.

"Merger Agreement Collateral Assignment" means the Collateral Assignment of Merger Documents, dated as of the date hereof, and in form and substance satisfactory to the Collateral Agent, made by Merger Sub in favor of the Collateral Agent, and acknowledged by the Representative.

"Merger Agreement R&W Collateral Assignment" means the Collateral Assignment of Buyer's Representations and Warranties Insurance Policy, dated as of the date hereof, and in form and substance satisfactory to the Collateral Agent, made by Merger Sub in favor of the Collateral Agent, and acknowledged by Liberty Surplus Insurance Corporation (a New Hampshire Stock Insurance Company).

"Merger Documents" means the Merger Agreement and all other agreements, instruments and other documents related thereto or executed in connection therewith.

"Merger Sub" means a newly incorporated subsidiary of the Lead Borrower formed to consummate the Closing Date Merger under the Merger Agreement.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Mortgage" means a mortgage, deed of trust or deed to secure debt, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Agents and the Lenders, securing the Obligations and delivered to the Collateral Agent.

"Multiemployer Plan" means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which any Loan Party or any of its ERISA Affiliates has contributed, or has been obligated to contribute, to at any time during the preceding the six calendar years.

"Net Cash Proceeds" means, with respect to any issuance or incurrence of any Indebtedness, any Disposition, or the receipt of any Extraordinary Receipts by any Person or any of its Subsidiaries, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person or such Subsidiary, in connection therewith after deducting therefrom only (a) in the case of any Disposition or the receipt of any Extraordinary Receipts consisting of insurance proceeds or condemnation awards, the amount of any Indebtedness secured by any Permitted Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be repaid prior to the repayment of the Obligations, and is repaid in connection therewith (other than Indebtedness under this Agreement and Indebtedness that is junior in lien priority to the Liens securing the Obligations), (b) reasonable expenses related thereto incurred by such Person or such Subsidiary in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person or such Subsidiary in connection therewith, and (d) net income taxes to be paid in connection therewith (after taking into account any tax credits or deductions and any tax sharing arrangements), in each case, to the extent, but only to the extent, that the amounts so deducted are (i) actually paid to a Person that, except in the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person or any of its Subsidiaries and (ii) properly attributable to such transaction or to the asset that is the subject thereof.

"New Facility" has the meaning specified therefor in Section 7.01(m).

"New Lending Office" has the meaning specified therefor in Section 2.09(c).

"Non-U.S. Lender" has the meaning specified therefor in Section 2.09(c).

"Notice of Borrowing" has the meaning specified therefor in Section 2.02(a).

"NPL" means the National Priorities List under CERCLA.

"Obligations" means all present and future indebtedness, obligations, and liabilities of each Loan Party to the Agents and the Lenders arising under or in connection with this Agreement or any other Loan Document, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.01. Without limiting the generality of the foregoing, the Obligations of each Loan Party under the Loan Documents include (a) the obligation (irrespective of whether a claim therefor is allowed in an Insolvency Proceeding) to pay principal, interest, charges, expenses, fees, premiums (including the Applicable Premium), attorneys' fees and disbursements, indemnities and other amounts payable by such Person under the Loan Documents, and (b) the obligation of such Person to reimburse any amount in respect of any of the foregoing that any Agent or any Lender (in its sole discretion) may elect to pay or advance on behalf of such Person.

"OFAC" means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Order" means any judgment, order, injunction, decree, ruling, writ, stipulation, decision, verdict, determination, or award of, or any agreement with, any Governmental Authority.

"Other Connection Taxes" means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document) except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

"Other Taxes" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

"Participant Register" has the meaning specified therefor in Section 12.07(h).

"Payment Office" means the Administrative Agent's office located at 150 East 58th Street, 39th Floor, New York, New York 10155, or at such other office or offices of the Administrative Agent as may be designated in writing from time to time by the Administrative Agent to the Collateral Agent and the Borrower.

"Payment Program" means any Government Sponsored Health Care Program, and any successor program, and all other third-party healthcare benefit plans and programs (including those offered or administered by employers, health maintenance organizations, preferred provider organizations, managed care organizations, commercial payors and any Medicaid or state waiver programs and health insurance providers).

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means an Employee Plan that is subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA maintained, sponsored or contributed to, or for which there is an obligation to contribute to, by any Loan Party or any of its ERISA Affiliates at any time during the preceding six calendar years.

"Perfection Certificate" means a certificate in form and substance satisfactory to the Collateral Agent providing information with respect to the property of each Loan Party.

"Permitted Acquisition" means an Acquisition consented to in writing by the Required Lenders.

"Permitted Disposition" means:

(a) [reserved];

(b) licensing, on a non-exclusive basis, Intellectual Property rights in the ordinary course of business;

(c) leasing or subleasing assets in the ordinary course of business;

(d) (i) the lapse of Registered Intellectual Property of the Lead Borrower and its Subsidiaries to the extent such Registered Intellectual Property is not economically desirable in the conduct of their business as currently conducted or anticipated to be conducted or (ii) the abandonment of Intellectual Property rights in the ordinary course of business so long as (in each case under clauses (i) and (ii)), (A) with respect to copyrights, such copyrights are not material revenue generating copyrights, and (B) such lapse is not adverse to the interests of the Secured Parties;

(e) any involuntary loss, damage or destruction of property;

(f) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, transfers of assets (i) from the Lead Borrower or any of its Subsidiaries to a Loan Party, and (ii) from any Subsidiary of the Lead Borrower that is not a Loan Party to any other Subsidiary of the Lead Borrower;

(h) Disposition of obsolete or worn-out equipment in the ordinary course of business; and

(i) Disposition of property or assets not otherwise permitted in clauses (a) through (h) above for cash in an aggregate amount not less than the fair market value of such property or assets; provided that (1) the Net Cash Proceeds of such Dispositions (including the proposed Disposition) do not exceed $75,000 in the aggregate in any Fiscal Year and (2) in all cases, are paid to the Administrative Agent for the benefit of the Agents and the Lenders pursuant to the terms of Section 2.05(c)(ii) or applied as provided in Section 2.05(c)(vi).

"Permitted Indebtedness" means:

(a) any Indebtedness owing to any Agent or any Lender under this Agreement and the other Loan Documents;

(b) any other Indebtedness listed on Schedule 7.02(b), and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(c) Permitted Purchase Money Indebtedness and any Permitted Refinancing Indebtedness in respect of such Indebtedness;

(d) Permitted Intercompany Investments;

(e) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, and appeal bonds;

(f) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Loan Parties, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such period;

(g) the incurrence by any Loan Party of Indebtedness under Hedging Agreements that are incurred for the bona fide purpose of hedging the interest rate applicable to the Loans and not for speculative purposes;

(h) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards") or other similar cash management services, in each case, incurred in the ordinary course of business provided paid when due;

(i) [reserved];

(j) [reserved];

(k) [reserved];

(l) Indebtedness in an aggregate amount not exceed $75,000 at any time; and

(m) Subordinated Indebtedness in an aggregate amount not exceeding $2,500,000 at any time outstanding.

"Permitted Intercompany Investments" means Investments made by (a) a Loan Party to or in another Loan Party, (b) a Subsidiary that is not a Loan Party to or in another Subsidiary that is not a Loan Party, and (c) a Subsidiary that is not a Loan Party to or in a Loan Party, so long as, in the case of a loan or advance, the parties thereto are party to the Intercompany Note.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents;

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of goods or services in the ordinary course of business;

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(e) Investments existing on the date hereof, as set forth on Schedule 7.02(e) hereto, but not any increase in the amount thereof as set forth in such Schedule or any other modification of the terms thereof;

(f) Permitted Intercompany Investments;

(g) Investments in the ordinary course of business consistent with past practice in connection with Channel Partnerships and Data Providers;

(h) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed $75,000 at any time outstanding.

"Permitted Liens" means:

(a) Liens securing the Obligations;

(b) Liens for taxes not yet due or that are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;

(c) Liens imposed by law, such as carriers', warehousemen's, mechanics', materialmen's and other similar Liens arising in the ordinary course of business and securing obligations (other than Indebtedness for borrowed money) that are not overdue by more than 30 days or are being contested in good faith and by appropriate proceedings promptly initiated and diligently conducted, and a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made therefor;

(d) Liens described on Schedule 7.02(a), provided that any such Lien shall only secure the Indebtedness that it secures on the Effective Date and any Permitted Refinancing Indebtedness in respect thereof;

(e) purchase money Liens on equipment acquired or held by any Loan Party or any of its Subsidiaries in the ordinary course of its business to secure Permitted Purchase Money Indebtedness so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof;

(f) deposits and pledges of cash securing (i) obligations incurred in respect of workers' compensation, unemployment insurance or other forms of governmental insurance or benefits, (ii) the performance of bids, tenders, leases, contracts (other than for the payment of money) and statutory obligations or (iii) obligations on surety or appeal bonds, but only to the extent such deposits or pledges are made or otherwise arise in the ordinary course of business and secure obligations not past due;

(g) with respect to any Facility, easements, zoning restrictions and similar encumbrances on real property and minor irregularities in the title thereto that do not (i) secure obligations for the payment of money or (ii) materially impair the value of such property or its use by any Loan Party or any of its Subsidiaries in the normal conduct of such Person's business;

(h) Liens of landlords and mortgagees of landlords (i) arising by statute or under any Lease or related Contractual Obligation entered into in the ordinary course of business, (ii) on fixtures and movable tangible property located on the real property leased or subleased from such landlord, or (iii) for amounts not yet due or that are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves or other appropriate provisions are maintained on the books of such Person in accordance with GAAP;

(i) the title and interest of a lessor or sublessor in and to personal property leased or subleased (other than through a Capitalized Lease), in each case extending only to such personal property;

(j) non-exclusive licenses of Intellectual Property rights in the ordinary course of business;

(k) judgment liens (other than for the payment of taxes, assessments or other governmental charges) securing judgments and other proceedings not constituting an Event of Default under Section 9.01(j);

(l) rights of set-off or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business;

(m) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness;

(n) [reserved];

(o) [reserved]; and

(p) other Liens which do not secure Indebtedness for borrowed money or letters of credit and as to which the aggregate amount of the obligations secured thereby does not exceed $75,000.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations) incurred to finance the acquisition of any fixed assets secured by a Lien permitted under clause (e) of the definition of "Permitted Liens"; provided that (a) such Indebtedness is incurred within 20 days after such acquisition, (b) such Indebtedness when incurred shall not exceed the purchase price of the asset financed and (c) the aggregate principal amount of all such Indebtedness shall not exceed $75,000 at any time outstanding.

"Permitted Refinancing Indebtedness" means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification (other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith);

(b) such extension, refinancing or modification does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) or the maturity date of the Indebtedness so extended, refinanced or modified;

(c) such extension, refinancing or modification is pursuant to terms that are not less favorable to the Loan Parties and the Lenders than the terms of the Indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any), and if such Indebtedness is unsecured, no new lien shall be granted as a result) being extended, refinanced or modified; and

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Loan Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

"Permitted Restricted Payments" means any of the following Restricted Payments made by:

(a) any Subsidiary to a Loan Party, and

(b) the Lead Borrower to pay dividends in the form of common Equity Interests.

"Permitted Specified Liens" means Permitted Liens described in clauses (a), (b) and (c) of the definition of Permitted Liens, and, solely in the case of Section 7.01(b)(i), including clauses (g), (h) and (i) of the definition of Permitted Liens.

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

"Personal Information" means any data or information that alone or together with any other data or information relates to an identified or identifiable natural person, browser, device or household and any other data or information that constitutes personal data, personal information, protected health information, or personally identifiable information under any applicable Privacy Obligations.

"Post-Default Rate" means a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 2.00%, or, if a rate of interest is not otherwise in effect, interest at the highest rate specified herein for any Loan then outstanding prior to an Event of Default plus 2.00%.

"Privacy Obligations" means all Requirements of Law, Contractual Obligations or terms of use related to the collection, Processing, disposal, storage, protection, security, transmission, or disposal of Personal Information, and includes without limitation HIPAA, the California Consumer Privacy Act of 2019 ("CCPA") as amended by the California Privacy Rights Act of 2020 ("CPRA"), the Federal Trade Commission Act, the Telephone Consumer Protection Act of 1990 and its implementing regulations ("TCPA"), the Controlling the Assault of Non-Solicited Pornography and Marketing ("CAN-SPAM"), the Computer Fraud and Abuse Act, state data security laws, state data privacy laws, state unfair or deceptive trade practices laws, state data breach notification laws.

"Pro Rata Share" means, with respect to:

(a) a Lender's obligation to make the Term Loan and the right to receive payments of interest, fees, and principal with respect thereto, the percentage obtained by dividing (i) such Lender's Term Loan Commitment, by (ii) the Total Term Loan Commitment, provided that if the Total Term Loan Commitment has been reduced to zero, the numerator shall be the aggregate unpaid principal amount of such Lender's portion of the Term Loan and the denominator shall be the aggregate unpaid principal amount of the Term Loan, and

(b) all other matters (including, without limitation, the indemnification obligations arising under Section 10.05), the percentage obtained by dividing (i) the unpaid principal amount of such Lender's portion of the Term Loan, by (ii) the aggregate unpaid principal amount of the Term Loan.

"Proceeding" means any action, audit, claim, charge, suit, lawsuit, litigation, arbitration, mediation, hearing, complaint, demand, examination, subpoena, civil investigative demand, prosecution, inquiry, governmental audit or investigation or other proceeding or enforcement action (whether at law or in equity, whether criminal, regulatory, administrative, civil or otherwise) by, under, or before any Governmental Authority.

"Process" or "Processing" means any operation or set of operations which is performed on data, including Personal Information, including the receipt, access, acquisition, processing, collection, recording, organization, compilation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure, import, export, protection (including security measures), transfer, transmission, dissemination or otherwise making available, alignment or combination, restriction, disposal, erasure, or destruction, or other activity performed on, to, with, or regarding data (whether electronically or in any other form or medium).

"Process Agent" has the meaning specified therefor in Section 12.10(b).

"Projections" means the Financial Statements (Projections), as updated from time to time pursuant to Section 7.01(a)(vii).

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash on-hand of the Loan Parties maintained in deposit accounts in the name of a Loan Party in the United States as of such date, which deposit accounts are subject to Control Agreements.

"Qualified Equity Interests" means, with respect to any Person, all Equity Interests of such Person that are not Disqualified Equity Interests.

"Real Property Deliverables" means each of the following agreements, instruments and other documents in respect of each Facility, each in form and substance reasonably satisfactory to the Collateral Agent:

(a) a Mortgage duly executed by the applicable Loan Party,

(b) evidence of the recording of each Mortgage in such office or offices as may be necessary or, in the reasonable opinion of the Collateral Agent, desirable to perfect the Lien purported to be created thereby or to otherwise protect the rights of the Collateral Agent and the Lenders thereunder;

(c) a Title Insurance Policy or bring-down of the existing Title Insurance Policy with respect to each Mortgage, dated as of the Effective Date;

(d) a current ALTA survey and a surveyor's certificate, certified to the Collateral Agent and to the issuer of the Title Insurance Policy with respect thereto by a professional surveyor licensed in the state in which such Facility is located and reasonably satisfactory to the Collateral Agent;

(e) a zoning report issued by a provider reasonably satisfactory to the Collateral Agent or a copy of each letter issued by the applicable Governmental Authority, evidencing each Facility's compliance with all applicable Requirements of Law, together with a copy of all certificates of occupancy issued with respect to each Facility;

(f) a Phase I Environmental Site Assessment prepared in accordance with the United States Environmental Protection Agency Standards and Practices for "All Appropriate Inquiries" under Section 101(3)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act as referenced in 40 CFR Part 312 and ASTM E-1527-13 "Standard Practice for Environmental Assessments" ("Phase I ESA") (and if reasonably requested by the Collateral Agent based upon the results of such Phase I ESA, a Phase II Environmental Site Assessment), by a nationally-recognized environmental consulting firm, reasonably satisfactory to the Collateral Agent; and

(g) such other agreements, instruments, appraisals and other documents (including guarantees and opinions of counsel) as the Collateral Agent may reasonably require.

"Recipient" means any Agent, any Lender, as applicable.

"Reference Rate" means, for any period, the greatest of (a) 4.00% per annum, (b) the Federal Funds Rate plus 0.50% per annum, (c) Adjusted Term SOFR (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis) plus 1.00% per annum, and (d) the rate last quoted by The Wall Street Journal as the "Prime Rate" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Reference Rate shall be effective from and including the date such change is publicly announced as being effective.

"Reference Rate Loan" means each portion of a Loan that bears interest at a rate determined by reference to the Reference Rate.

"Register" has the meaning specified therefor in Section 12.07(f).

"Registered Intellectual Property" means Intellectual Property that is issued, registered, renewed or the subject of a pending application.

"Regulation T", "Regulation U" and "Regulation X" mean, respectively, Regulations T, U and X of the Board or any successor, as the same may be amended or supplemented from time to time.

"Related Fund" means, with respect to any Person, an Affiliate of such Person, or a fund or account managed by such Person or an Affiliate of such Person.

"Related Parties" means, with respect to any Person, such Person's Affiliates and the direct and indirect equityholders, partners, directors, officers, employees, agents, consultants, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through or in any environmental media, including the indoor or outdoor air, soil, surface or ground water, sediments or property.

"Remedial Action" means any action (a) to correct, mitigate, or address any actual, alleged or threatened violation of or non-compliance with any Environmental Law or Environmental Permit, or (b) to clean up, remove, remediate, mitigate, abate, contain, treat, monitor, assess, evaluate, investigate, prevent, minimize or in any other way address any environmental condition or the actual, alleged or threatened presence, Release or threatened Release of any Hazardous Materials (including the performance of pre-remedial studies and investigations and post-remedial operation and maintenance activities).

"Replacement Lender" has the meaning specified therefor in Section 12.02(c).

"Replacement Rate" has the meaning specified therefor in Section 2.07(g).

"Reportable Event" means an event described in Section 4043 of ERISA (other than an event not subject to the provision for 30-day notice to the PBGC under the regulations promulgated under such Section).

"Required Lenders" means Lenders whose Pro Rata Shares (calculated in accordance with clause (c) of the definition thereof) aggregate at least 50.1%.

"Required Prepayment Date" shall have the meaning assigned to such term in Section 2.05(g).

"Requirements of Law" means, with respect to any Person, collectively, the common law and any and all federal, state, provincial, local, foreign, multinational or international laws, statutes, codes, treaties, standards, rules and regulations, guidelines, ordinances, orders, judgments, writs, injunctions, decrees (including administrative or judicial precedents or authorities), and the interpretation or administration thereof by, and other determinations, directives, requirements or requests of any Governmental Authority, in each case that are applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Restricted Payment" means (a) the declaration or payment of any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Loan Party or any of its Subsidiaries, now or hereafter outstanding, together with any payment or distribution pursuant to a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, (b) the making of any repurchase, redemption, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Loan Party or any direct or indirect parent of any Loan Party, now or hereafter outstanding, (c) the making of any payment to retire, or to obtain the surrender of, any outstanding warrants, options or other rights for the purchase or acquisition of shares of any class of Equity Interests of any Loan Party, now or hereafter outstanding, (d) the return of any Equity Interests to any shareholders or other equity holders of any Loan Party or any of its Subsidiaries, or make any other distribution of property, assets, shares of Equity Interests, warrants, rights, options, obligations or securities thereto as such or (e) the payment of any management, consulting, monitoring or advisory fees or any other fees or expenses (including the reimbursement thereof by any Loan Party or any of its Subsidiaries) pursuant to any management, consulting, monitoring, advisory or other services agreement to any of the shareholders or other equityholders of any Loan Party or any of its Subsidiaries or other Affiliates, or to any other Subsidiaries or Affiliates of any Loan Party.

"Sale and Leaseback Transaction" means, with respect to the Lead Borrower or any of its Subsidiaries, any arrangement, directly or indirectly, with any Person whereby the Lead Borrower or any of its Subsidiaries shall sell or transfer any property used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

"Sanctioned Country" means, at any time, a country or territory that is the subject or target of any Sanctions that broadly prohibit dealings with that country or territory (which, as of the Effective Date, include Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Sanctioned Person" means, at any time, (a) any Person listed in OFAC's Specially Designated Nationals and Blocked Persons List, OFAC's Sectoral Sanctions Identification List, and any other Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty's Treasury of the United Kingdom, Germany, Canada, Australia, or other relevant sanctions authority, (b) a Person that resides in, is organized in or located in, or has a place of business in, a country or territory named on any list referred to in clause (a) of this definition or a country or territory that is designated as a "Non-Cooperative Jurisdiction" by the Financial Action Task Force on Money Laundering, or whose subscription funds are transferred from or through any such jurisdiction (each of the foregoing in this clause (b), a "Sanction Target"), or a Person that owns 50% or more of the Equity Interests of, or is otherwise controlled by, or is acting on behalf of, one or more Sanction Targets, (c) any Person with whom or with which a U.S. Person is prohibited from dealing under any of the Sanctions, or (d) any Person owned or controlled by any Person or Persons described in clause (a) or (b).

"Sanctions" means Requirements of Law concerning or relating to economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by OFAC, the U.S. Department of State, the European Union, His Majesty's Treasury of the United Kingdom, or other relevant sanctions authority.

"SEC" means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act.

"Secured Party" means any Agent, and any Lender.

"Securities Act" means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

"Securitization" has the meaning specified therefor in Section 12.07(l).

"Security Agreement" means a Pledge and Security Agreement, in form and substance satisfactory to the Collateral Agent, made by a Loan Party in favor of the Collateral Agent for the benefit of the Secured Parties securing the Obligations.

"Security Event" means a "Breach of Unsecured Protected Health Information" as defined under HIPAA or any other unauthorized Processing or loss of Personal Information.

"SOFR" means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at http://www.newyorkfed.org (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

"SOFR Deadline" has the meaning specified therefor in Section 2.07(a) hereof.

"SOFR Loan" means each portion of a Loan that bears interest at a rate determined by reference to the Adjusted Term SOFR.

"SOFR Notice" has the meaning specified therefor in Section 2.07(a) hereof.

"SOFR Option" has the meaning specified therefor in Section 2.07(a) hereof.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is not less than the total amount of the liabilities of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its existing debts as they become absolute and matured, (c) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

"Standard & Poor's" means Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc. and any successor thereto.

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are satisfactory to the Collateral Agent and which has been expressly subordinated in right of payment to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance satisfactory to the Collateral Agent, or (b) otherwise on terms and conditions satisfactory to the Collateral Agent.

"Subsidiary" means, with respect to any Person at any date, any corporation, limited or general partnership, limited liability company, trust, estate, association, joint venture or other business entity (a) the accounts of which would be consolidated with those of such Person in such Person's consolidated financial statements if such financial statements were prepared in accordance with GAAP or (b) of which more than 50% of (i) the outstanding Equity Interests having (in the absence of contingencies) ordinary voting power to elect a majority of the Board of Directors of such Person, (ii) in the case of a partnership or limited liability company, the interest in the capital or profits of such partnership or limited liability company or (iii) in the case of a trust, estate, association, joint venture or other entity, the beneficial interest in such trust, estate, association or other entity business is, at the time of determination, owned or controlled directly or indirectly through one or more intermediaries, by such Person. References to a Subsidiary shall mean a Subsidiary of the Lead Borrower unless the context expressly provides otherwise.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Termination Date" means the first date on which all of the Obligations are paid in full in cash and the Commitments of the Lenders are terminated.

"Term Loan" means, collectively, the loans made by the Term Loan Lenders to the Borrowers on the Closing Date pursuant to Section 2.01.

"Term Loan Commitment" means, with respect to each Lender, the commitment of such Lender to make the Term Loan to the Borrowers in the amount set forth in Schedule 1.01(A) hereto or in the Assignment and Acceptance pursuant to which such Lender became a Lender under this Agreement, as the same may be terminated or reduced from time to time in accordance with the terms of this Agreement.

"Term Loan Lender" means a Lender with a Term Loan Commitment or a Term Loan.

"Term SOFR" means

(a) for any calculation with respect to a SOFR Loans, the Term SOFR Reference Rate for a tenor of three months on the day (such day, the "Periodic Term SOFR Determination Day") that is two (2) Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding Business Day is not more than three (3) Business Days prior to such Periodic Term SOFR Determination Day; provided that if Term SOFR as so determined shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

(b) for any calculation with respect to an Reference Rate Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the "**ABR Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR SOFR Determination Day.

"Term SOFR Adjustment" means 0.26161% (26.161 basis points).

"Term SOFR Administrator" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

"Term SOFR Reference Rate" means the forward-looking term rate based on SOFR.

"Test Period" means the most recently ended twelve (12) month period for which financial statements have been (or were required to have been) delivered pursuant to Section 7.01(a)(i).

"Title Insurance Policy" means a mortgagee's loan policy, in form and substance satisfactory to the Collateral Agent, together with all endorsements made from time to time thereto, issued to the Collateral Agent by or on behalf of a title insurance company selected by or otherwise satisfactory to the Collateral Agent, insuring the Lien created by a Mortgage in an amount and on terms and with such endorsements satisfactory to the Collateral Agent, delivered to the Collateral Agent.

"Total Term Loan Commitment" means the sum of the amounts of the Lenders' Term Loan Commitments.

"Uniform Commercial Code" or "UCC" has the meaning specified therefor in Section 1.04.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

"U.S. Person" means any Person that is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code.

"VCOC Management Rights Agreement" has the meaning specified therefor in Section 5.01(d).

"Waivable Mandatory Prepayment" shall have the meaning assigned to such term in Section 2.05(g).

"WARN" has the meaning specified therefor in Section 6.01(p).

"Withholding Agent" means any Loan Party and the Administrative Agent.

"Working Capital" means, at any date of determination thereof, (a) the sum, for any Person and its Subsidiaries, of (i) the unpaid face amount of all Accounts of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of prepaid expenses and other current assets of such Person and its Subsidiaries as at such date of determination (other than cash, Cash Equivalents and any Indebtedness owing to such Person or any of its Subsidiaries by Affiliates of such Person), minus (b) the sum, for such Person and its Subsidiaries, of (i) the unpaid amount of all accounts payable of such Person and its Subsidiaries as at such date of determination, plus (ii) the aggregate amount of all accrued expenses of such Person and its Subsidiaries as at such date of determination (other than the current portion of long-term debt and all accrued interest and taxes).

"Yield Maintenance Amount" means, as of any date of determination, an amount equal to (i) the aggregate amount of remaining interest the Lenders would earn on the Applicable Premium Subject Amount assuming the rate of interest is the Applicable Premium Interest Rate from the date of the occurrence of the Applicable Premium Trigger Event to the date that is one year after the Closing Date, plus (ii) an amount equal to 3.0% of the aggregate principal amount of Term Loans subject to the Applicable Premium Trigger Event on such date.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

Section 1.03 Certain Matters of Construction. References in this Agreement to "determination" by any Agent include good faith estimates by such Agent (in the case of quantitative determinations) and good faith beliefs by such Agent (in the case of qualitative determinations). A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of any Agent, any agreement entered into by any Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by any Agent pursuant to or as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by any Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agents and the Lenders. Wherever the phrase "to the knowledge of any Loan Party" or words of similar import relating to the knowledge or the awareness of any Loan Party are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of any Loan Party or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer's duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of such Loan Party and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder.

Section 1.04 Accounting and Other Terms.

(a) Unless otherwise expressly provided herein, each accounting term used herein shall have the meaning given it under GAAP. For purposes of determining compliance with any incurrence or expenditure tests set forth in Section 7.01, Section 7.02 and Section 7.03, any amounts so incurred or expended (to the extent incurred or expended in a currency other than Dollars) shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of such incurrence or expenditure under any provision of any such Section that has an aggregate Dollar limitation provided for therein (and to the extent the respective incurrence or expenditure test regulates the aggregate amount outstanding at any time and it is expressed in terms of Dollars, all outstanding amounts originally incurred or spent in currencies other than Dollars shall be converted into Dollars on the basis of the exchange rates (as shown on the Bloomberg currency page for such currency or, if the same does not provide such exchange rate, by reference to such other publicly available service for displaying exchange rates as may be reasonably selected by the Agents or, in the event no such service is selected, on such other basis as is reasonably satisfactory to the Agents) as in effect on the date of any new incurrence or expenditures made under any provision of any such Section that regulates the Dollar amount outstanding at any time). Notwithstanding the foregoing, (i) with respect to the accounting for leases as either operating leases or capital leases and the impact of such accounting in accordance with FASB ASC 842 on the definitions and covenants herein, GAAP as in effect on December 31, 2018 shall be applied, (ii) for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Lead Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded and (iii) with respect to revenue recognition and the impact of such accounting in accordance with FASB ASC 606 on the definitions and covenants herein, GAAP as in effect on December 31, 2017 shall be applied.

(b) All terms used in this Agreement which are defined in Article 8 or Article 9 of the Uniform Commercial Code as in effect from time to time in the State of New York (the "Uniform Commercial Code" or the "UCC") and which are not otherwise defined herein shall have the same meanings herein as set forth therein, provided that terms used herein which are defined in the Uniform Commercial Code as in effect in the State of New York on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as any Agent may otherwise determine.

Section 1.05 Time References. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding"; provided, however, that with respect to a computation of fees or interest payable to any Secured Party, such period shall in any event consist of at least one full day.

Section 1.06 Interest Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto, including whether the composition or characteristics of any such alternative, successor or replacement rate will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, or Term SOFR prior to its discontinuance or unavailability. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR, or Adjusted Term SOFR, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE II

THE LOANS

Section 2.01 Commitments. Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Term Loan Lender severally agrees to make the Term Loan to the Borrowers on the Closing Date, in an aggregate principal amount not to exceed the amount of such Lender's Term Loan Commitment. Notwithstanding the foregoing, the aggregate principal amount of the Term Loan made on the Closing Date shall not exceed the Total Term Loan Commitment. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

Section 2.02 Making the Loans.

(a) The Lead Borrower shall give the Administrative Agent prior telephonic notice (immediately confirmed in writing, in substantially the form of Exhibit C hereto (a "Notice of Borrowing")), not later than 12:00 noon (New York City time) on the date which is three Business Days prior to the Closing Date (or such shorter period as the Administrative Agent is willing to accommodate in its sole discretion). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Loan, (ii) whether the Loan is requested to be a Reference Rate Loan or a SOFR Loan and, in the case of a SOFR Loan, the initial Interest Period with respect thereto, (iii) the proposed Closing Date and (iv) the wire instructions of the Lead Borrower. The Administrative Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer's authority to request a Loan on behalf of the Borrowers until the Administrative Agent receives written notice to the contrary. The Administrative Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing.

(b) The Notice of Borrowing pursuant to this Section 2.02 may be conditional upon the occurrence of the Closing Date.

(c) All Loans under this Agreement shall be made by the Lenders simultaneously and proportionately to their Pro Rata Shares of the Total Term Loan Commitment, it being understood that no Lender shall be responsible for any default by any other Lender in that other Lender's obligations to make a Loan requested hereunder, nor shall the Commitment of any Lender be increased or decreased as a result of the default by any other Lender in that other Lender's obligation to make a Loan requested hereunder, and each Lender shall be obligated to make the Loans required to be made by it by the terms of this Agreement regardless of the failure by any other Lender.

Section 2.03 Repayment of Loans; Evidence of Debt.

(a) The outstanding principal amount of the Term Loan shall be repayable in quarterly installments on the last Business Day of each fiscal quarter commencing on December 31, 2023 equal to 1.25% of the principal amount of the Term Loan issued on the Closing Date (or in the case of the first repayment date, a pro rata portion of such amount for the period commencing with the Closing Date and ending on December 31, 2023). The outstanding unpaid principal amount of the Term Loan, and all accrued and unpaid interest thereon, shall be due and payable on the earliest of (i) the Final Maturity Date and (ii) the date on which the Term Loan is declared due and payable pursuant to the terms of this Agreement.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) Subject to the entries in the Register, the entries made in the accounts maintained pursuant to Section 2.03(b) or Section 2.03(c) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that (i) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement and (ii) in the event of any conflict between the entries made in the accounts maintained pursuant to Section 2.03(b) and the accounts maintained pursuant to Section 2.03(c), the accounts maintained pursuant to Section 2.03(c) shall govern and control.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall execute and deliver to such Lender a promissory note payable to the Lender (or, if requested by such Lender, to such Lender and its registered assigns) in a form furnished by the Collateral Agent and reasonably acceptable to the Borrowers. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 12.07) be represented by one or more promissory notes in such form payable to the payee named therein (or to such payee and its registered assigns).

Section 2.04 Interest.

(a) Term Loan. Subject to the terms of this Agreement, at the option of the Borrowers, the Term Loan or any portion thereof shall be either a Reference Rate Loan or a SOFR Loan. Each portion of the Term Loan that is a Reference Rate Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Reference Rate plus the Applicable Margin, and each portion of the Term Loan that is a SOFR Loan shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to Adjusted Term SOFR for the Interest Period in effect for the Term Loan (or such portion thereof) plus the Applicable Margin.

(b) Default Interest. To the extent permitted by law and notwithstanding anything to the contrary in this Section, following written notice from the Administrative Agent to the Borrowers upon the occurrence and during the continuance of an Event of Default, the principal of, and all accrued and unpaid interest on, all Loans, fees, indemnities or any other Obligations of the Loan Parties under this Agreement and the other Loan Documents, shall bear interest, from the date such Event of Default occurred until the date such Event of Default is cured or waived in writing in accordance herewith, at a rate per annum equal at all times to the Post-Default Rate.

(c) Interest Payment. Interest on each Loan shall be payable (i) in the case of a Reference Rate Loan, monthly, in arrears, on the last Business Day of each month, commencing on the last Business Day of the month following the month in which such Loan is made, (ii) in the case of a SOFR Loan, on the last day of each Interest Period applicable to such Loan, and (iii) in the case of each Loan, at maturity (whether upon demand, by acceleration or otherwise). Interest at the Post-Default Rate shall be payable on demand.

(d) General. All interest and fees shall be computed on the basis of a year of 360 days for the actual number of days, including the first day but excluding the last day, elapsed.

Section 2.05 Reduction of Commitment; Prepayment of Loans.

(a) Reduction of Commitments. The Total Term Loan Commitment shall terminate on the earliest to occur of (i) on 5:00 p.m. (New York City time) ten (10) Business Days after the Effective Date, (ii) upon the funding of any Term Loan on or prior to such date and (iii) upon the occurrence of the Closing Date Merger without the funding of any Term Loans. Upon the occurrence of a commitment termination pursuant to clause (i) or (iii) above, the Applicable Premium shall be due and payable.

(b) Optional Prepayment.

(i) [Reserved].

(ii) Term Loan. The Borrowers may, at any time and from time to time, upon at least 5 Business Days' prior written notice to the Administrative Agent, prepay the principal of the Term Loan, in whole or in part. Each prepayment made pursuant to this Section 2.05(b)(ii) shall be accompanied by the payment of (A) accrued interest to the date of such payment on the amount prepaid and (B) the Applicable Premium, if any, payable in connection with such prepayment of the Term Loan. Each such prepayment shall be applied against the remaining installments of principal due on the Term Loan in the inverse order of maturity.

(iii) Termination of Agreement. The Borrowers may, upon at least 10 days prior written notice to the Administrative Agent, terminate this Agreement by paying to the Administrative Agent, in cash, the Obligations, in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement. If the Borrowers have sent a notice of termination pursuant to this Section 2.05(b)(iii), then the Lenders' obligations (if any) to extend credit hereunder shall terminate and the Borrowers shall be obligated to repay the Obligations in full, plus the Applicable Premium, if any, payable in connection with such termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice.

(c) Mandatory Prepayment.

(i) Contemporaneously with the delivery to the Agents and the Lenders of audited annual financial statements pursuant to Section 7.01(a)(iii), commencing with the delivery to the Agents and the Lenders of the financial statements for the Fiscal Year ended December 31, 2024 or, if such financial statements are not delivered to the Agents and the Lenders on the date such statements are required to be delivered pursuant to Section 7.01(a)(iii), on the date such statements are required to be delivered to the Agents and the Lenders pursuant to Section 7.01(a)(iii), the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to, if the Leverage Ratio of the Lead Borrower and its Subsidiaries as of the end of such Fiscal Year is (A) greater than 4.10:1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 75% of the Excess Cash Flow of the Lead Borrower and its Subsidiaries for such Fiscal Year, (B) equal to or less than 4.10:1.00 but greater than 3.60:1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 50% of the Excess Cash Flow of the Lead Borrower and its Subsidiaries for such Fiscal Year and (C) equal to or less than 3.60:1.00, prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d) in an amount equal to 25% of the Excess Cash Flow of the Lead Borrower and its Subsidiaries for such Fiscal Year.

(ii) Immediately upon any Disposition pursuant to Section (i) of the definition of Permitted Disposition by any Loan Party or its Subsidiaries, the Borrowers shall prepay the outstanding principal amount of the Loans in accordance with Section 2.05(d), together with the Applicable Premium, if any, in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such Disposition to the extent that the aggregate amount of Net Cash Proceeds received by all Loan Parties and their Subsidiaries (and not paid to the Administrative Agent as a prepayment of the Loans) shall exceed for all such Dispositions $25,000 in any Fiscal Year. Nothing contained in this Section 2.05(c)(ii) shall permit any Loan Party or any of its Subsidiaries to make a Disposition of any property other than in accordance with Section 7.02(c)(ii).

(iii) Upon the issuance or incurrence by any Loan Party or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), the Borrowers shall prepay the outstanding amount of the Loans, together with the Applicable Premium, if any, in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith. The provisions of this Section 2.05(c)(iii) shall not be deemed to be implied consent to any such issuance, incurrence or sale otherwise prohibited by the terms and conditions of this Agreement.

(iv) Upon the receipt by any Loan Party or any of its Subsidiaries of any Extraordinary Receipts, the Borrowers shall prepay the outstanding principal of the Loans, together with the Applicable Premium, if any, in accordance with Section 2.05(d) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection therewith.

(v) [Reserved].

(vi) Notwithstanding the foregoing, with respect to Net Cash Proceeds received by any Loan Party or any of its Subsidiaries in connection with a Disposition or the receipt of Extraordinary Receipts consisting of insurance proceeds or condemnation awards that are required to be used to prepay the Obligations pursuant to Section 2.05(c)(ii) or Section 2.05(c)(iv), as the case may be, up to $1,000,000 in the aggregate in any Fiscal Year of the Net Cash Proceeds from all such Dispositions and Extraordinary Receipts shall not be required to be so used to prepay the Obligations to the extent that such Net Cash Proceeds are used to replace, or, in the case of insurance condemnation money, repair or restore properties or assets (in each case, other than current assets) used in such Person's business and which properties or assets shall constitute Collateral in which the Collateral Agent shall have a first priority Lien, provided that, (A) no Default or Event of Default has occurred and is continuing on the date such Person receives such Net Cash Proceeds, (B) the Lead Borrower delivers a certificate to the Administrative Agent within 5 days after such Disposition or loss, destruction or taking, as the case may be, stating that such Net Cash Proceeds shall be used to replace, repair or restore properties or assets used in such Person's business within a period specified in such certificate not to exceed 180 days after the date of receipt of such Net Cash Proceeds (which certificate shall set forth estimates of the Net Cash Proceeds to be so expended), (C) such Net Cash Proceeds are deposited in an account subject to a Control Agreement, and (D) upon the earlier of (1) the expiration of the period specified in the relevant certificate furnished to the Administrative Agent pursuant to clause (B) above or (2) the occurrence of a Default or an Event of Default, such Net Cash Proceeds, if not theretofore so used, shall be used to prepay the Obligations in accordance with Section 2.05(c)(ii) or Section 2.05(c)(iv) as applicable, together with the Applicable Premium, if any.

(d) Application of Payments. Each prepayment pursuant to subsections (c)(i), (c)(ii), (c)(iii), (c)(iv) and (c)(v) above shall be applied, to the Term Loan, until paid in full. Each such prepayment of the Term Loan shall be applied against the remaining installments of principal of the Term Loan in the inverse order of maturity. Notwithstanding the foregoing, after the occurrence and during the continuance of an Event of Default, if the Administrative Agent has elected, or has been directed by the Collateral Agent or the Required Lenders, to apply payments in respect of any Obligations in accordance with Section 4.03(b), prepayments required under Section 2.05(c) shall be applied in the manner set forth in Section 4.03(b).

(e) Interest and Fees. Any prepayment made pursuant to this Section 2.05 shall be accompanied by (i) accrued interest on the principal amount being prepaid to the date of prepayment, (ii) any Funding Losses payable pursuant to Section 2.08, (iii) the Applicable Premium, if any, payable in connection with such prepayment of the Loans to the extent required under Section 2.06(b) and (iv) if such prepayment would reduce the amount of the outstanding Loans to zero, such prepayment shall be accompanied by the payment of all fees accrued to such date pursuant to Section 2.06.

(f) Cumulative Prepayments. Except as otherwise expressly provided in this Section 2.05, payments with respect to any subsection of this Section 2.05 are in addition to payments made or required to be made under any other subsection of this Section 2.05.

(g) Waivable Mandatory Prepayments. Anything contained herein to the contrary notwithstanding, in the event that the Borrowers are required to make any mandatory prepayment (a "Waivable Mandatory Prepayment") of the Loans pursuant to Section 2.05(c), not less than 2 Business Day prior to the date on which the Borrowers are required to make such Waivable Mandatory Prepayment (the "Required Prepayment Date"), the Borrowers shall notify the Administrative Agent in writing of the amount of such prepayment, and the Administrative Agent will promptly thereafter notify each Lender of the amount of such Lender's Pro Rata Share of such Waivable Mandatory Prepayment and such Lender's option to refuse such amount. Each such Lender may exercise such option by giving written notice to the Lead Borrower and the Administrative Agent of its election to do so on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date (it being understood that any Lender that does not notify the Lead Borrower and the Administrative Agent of its election to exercise such option on or before 12:00 noon (New York City time) one Business Day prior to the Required Prepayment Date shall be deemed to have elected, as of such date, not to exercise such option). On the Required Prepayment Date, the Borrowers shall pay to the Administrative Agent the amount of the Waivable Mandatory Prepayment, which amount shall be applied (i) in an amount equal to that portion of the Waivable Mandatory Prepayment payable to those Lenders that have elected not to exercise such option, to prepay the Loans of such Lenders (which prepayment shall be applied to prepay the outstanding principal amount of the Obligations in accordance with Section 2.05(d)) and (ii) to the extent of any excess, to the Borrowers for working capital and general corporate purposes.

Section 2.06 Fees.

(a) The Borrowers agree to pay to the Agents and Lenders the fees set forth in the Fee Letter. Such fees shall be nonrefundable once paid.

(b) Applicable Premium.

(i) Upon the occurrence of an Applicable Premium Trigger Event, the Borrowers shall pay to the Administrative Agent, for the account of the Lenders in accordance with their Pro Rata Shares, the Applicable Premium.

(ii) Any Applicable Premium payable in accordance with this Section 2.06(b) shall be presumed to be equal to the liquidated damages sustained by the Lenders as the result of the occurrence of the Applicable Premium Trigger Event and the Loan Parties agree that it is reasonable under the circumstances currently existing. THE LOAN PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(iii) The Loan Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between the Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Premium is a material inducement to Lenders to provide the Commitments and make the Loans, and (F) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of the Agents and the Lenders and that it would be impractical and extremely difficult to ascertain the actual amount of damages to the Agents and the Lenders or profits lost by the Agents and the Lenders as a result of such Applicable Premium Trigger Event.

(iv) Nothing contained in this Section 2.06(b) shall permit any prepayment of the Loans or reduction of the Commitments not otherwise permitted by the terms of this Agreement or any other Loan Document.

Section 2.07 SOFR Option.

(a) The Lead Borrower may, at any time and from time to time, so long as no Default or Event of Default has occurred and is continuing, elect to have interest on all or a portion of the Loans be charged at a rate of interest based upon the Adjusted Term SOFR (the "SOFR Option") by notifying the Administrative Agent prior to 11:00 a.m. (New York City time) at least three (3) Business Days prior to (i) the proposed borrowing date of a Loan (as provided in Section 2.02), (ii) in the case of the conversion of a Reference Rate Loan to a SOFR Loan, the commencement of the proposed Interest Period or (iii) in the case of the continuation of a SOFR Loan as a SOFR Loan, the last day of the then current Interest Period (the "SOFR Deadline"). Notice of the Lead Borrower's election of the SOFR Option for a permitted portion of the Loans and an Interest Period pursuant to this Section 2.07 shall be made by delivery to the Administrative Agent of (A) a Notice of Borrowing (in the case of the initial making of a Loan) in accordance with Section 2.02 or (B) a notice in writing, in substantially the form of Exhibit D hereto (a "SOFR Notice") prior to the SOFR Deadline. Promptly upon its receipt of each such SOFR Notice, the Administrative Agent shall provide a copy thereof to each of the Lenders. Each SOFR Notice shall be irrevocable and binding on the Borrowers.

(b) Interest on SOFR Loans shall be payable in accordance with Section 2.04(c). On the last day of each applicable Interest Period, unless the Lead Borrower has properly exercised the SOFR Option with respect thereto, the interest rate applicable to such SOFR Loans automatically shall convert to the rate of interest then applicable to Reference Rate Loans of the same type hereunder. At any time that a Default or an Event of Default has occurred and is continuing, the Lead Borrower no longer shall have the option to request that any portion of the Loans bear interest at the Adjusted Term SOFR and the Administrative Agent shall have the right to convert the interest rate on all outstanding SOFR Loans to the rate of interest then applicable to Reference Rate Loans of the same type hereunder on the last day of the then current Interest Period.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrowers (i) shall have not more than two SOFR Loans in effect at any given time, and (ii) only may exercise the SOFR Option for SOFR Loans of at least $500,000 and integral multiples of $100,000 in excess thereof.

(d) The Borrowers may prepay SOFR Loans at any time; provided, however, that in the event that SOFR Loans are prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any mandatory prepayment pursuant to Section 2.05(c) or any application of payments or proceeds of Collateral in accordance with Section 4.03 or Section 4.04 or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders and their participants harmless against any and all Funding Losses in accordance with Section 2.08.

(e) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Required Lenders may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. The parties shall use commercially reasonable efforts to satisfy any applicable IRS guidance, including Treasury Regulation Section 1.1001-6 and any future guidance, to the effect that the implementation of a Benchmark Replacement will not result in a deemed exchange for U.S. federal income tax purposes of any Loan under this Agreement for U.S. federal income tax purposes.

(f) In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(g) The Administrative Agent will promptly notify the Borrowers and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. Any determination, decision or election that may be made by the Administrative Agent and the Required Lenders pursuant to this Section 2.07, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document.

(h) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(a) Upon the Lead Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Lead Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a Borrowing of or conversion to Reference Rate Loans.

Section 2.08 Funding Losses. In connection with each SOFR Loan, the Borrowers shall indemnify, defend, and hold the Agents and the Lenders harmless against any loss, cost, or expense incurred by any Agent or any Lender as a result of (a) the payment of any principal of any SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of a Default or an Event of Default or any mandatory prepayment required pursuant to Section 2.05(c)), (b) the conversion of any SOFR Loan other than on the last day of the Interest Period applicable thereto (including as a result of a Default or an Event of Default), or (c) the failure to borrow, convert, continue or prepay any SOFR Loan on the date specified in any Notice of Borrowing or SOFR Notice delivered pursuant hereto (such losses, costs, and expenses, collectively, "Funding Losses"). Funding Losses shall, with respect to any Agent or any Lender, be deemed to equal the amount reasonably determined by such Agent or such Lender to be the excess, if any, of (i) the amount of interest that would have accrued on the principal amount of such SOFR Loan had such event not occurred, at the Adjusted Term SOFR that would have been applicable thereto, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period therefor), minus (ii) the amount of interest that would accrue on such principal amount for such period at the interest rate which such Agent or such Lender would be offered were it to be offered, at the commencement of such period, Dollar deposits of a comparable amount and period in the London interbank market. A certificate of an Agent or a Lender delivered to the Lead Borrower setting forth any amount or amounts that such Agent or such Lender is entitled to receive pursuant to this Section 2.08 shall be conclusive absent manifest error.

Section 2.09 Taxes.

(a) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any and all Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of any Withholding Agent) requires the deduction or withholding of any Taxes from or in respect of any such payment, (i) the applicable Withholding Agent shall make such deduction or withholding, (ii) the applicable Withholding Agent shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased by the amount (an "Additional Amount") necessary such that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 2.09) the applicable Recipient receives the amount equal to the sum it would have received had no such deduction or withholding been made.

(b) In addition, each Loan Party shall pay to the relevant Governmental Authority in accordance with applicable law any Other Taxes, or at the option of the Administrative Agent timely reimburse it for the payment of any Other Taxes by any Secured Party. As soon as practicable after any payment of Taxes by a Loan Party to a Governmental Authority pursuant to this Section, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(c) The Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Loan Party by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) (1) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.09(d)(i)(A), (d)(i)(B) and (d)(i)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(i) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Lead Borrower and the Administrative Agent on about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Lender that is not a U.S. Person (a "Foreign Lender") shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit 2.09(d)-1 hereto to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a "10 percent shareholder" of the Lead Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Internal Revenue Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-2 or Exhibit 2.09(d)-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit 2.09(d)-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Lead Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Lead Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Lead Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Lead Borrower or the Administrative Agent as may be necessary for the Lead Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Administrative Agent in writing of its legal inability to do so.

(e) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.07(h) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.09 (including by the payment of additional amounts pursuant to this Section 2.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.09 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) The obligations of the Loan Parties under this Section 2.09 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.10 Increased Costs and Reduced Return.

(a) If any Secured Party shall have determined that any Change in Law shall (i) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto, (ii) impose, modify or deem applicable any reserve, special deposit or similar requirement against any Loan or against assets of or held by, or deposits with or for the account of, or credit extended by, such Secured Party or any Person controlling such Secured Party or (iii) impose on such Secured Party or any Person controlling such Secured Party any other condition regarding this Agreement or any Loan, and the result of any event referred to in clauses (i), (ii) or (iii) above shall be to increase the cost to such Secured Party of making any Loan, or agreeing to make any Loan, or to reduce any amount received or receivable by such Secured Party hereunder, then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party such additional amounts as will compensate such Secured Party for such increased costs or reductions in amount.

(b) If any Secured Party shall have determined that any Change in Law either (i) affects or would affect the amount of capital required or expected to be maintained by such Secured Party or any Person controlling such Secured Party, and such Secured Party determines that the amount of such capital is increased as a direct or indirect consequence of any Loans made or maintained, such Secured Party's or such other controlling Person's other obligations hereunder, or (ii) has or would have the effect of reducing the rate of return on such Secured Party's or such other controlling Person's capital to a level below that which such Secured Party or such controlling Person could have achieved but for such circumstances as a consequence of any Loans made or maintained, or any agreement to make Loans or such Secured Party's or such other controlling Person's other obligations hereunder (in each case, taking into consideration, such Secured Party's or such other controlling Person's policies with respect to capital adequacy), then, upon demand by such Secured Party, the Borrowers shall pay to such Secured Party from time to time such additional amounts as will compensate such Secured Party for such cost of maintaining such increased capital or such reduction in the rate of return on such Secured Party's or such other controlling Person's capital.

(c) All amounts payable under this Section 2.10 shall bear interest from the date that is 10 days after the date of demand by any Secured Party until payment in full to such Secured Party at the Reference Rate. A certificate of such Secured Party claiming compensation under this Section 2.10, specifying the event herein above described and the nature of such event shall be submitted by such Secured Party to the Borrower, setting forth the additional amount due and an explanation of the calculation thereof, and such Secured Party's reasons for invoking the provisions of this Section 2.10, and shall be final and conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.10 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 2.10 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) The obligations of the Loan Parties under this Section 2.10 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

Section 2.11 Changes in Law; Impracticability or Illegality.

(a) The Adjusted Term SOFR may be adjusted by the Administrative Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest at the Adjusted Term SOFR. In any such event, the affected Lender shall give the Lead Borrower and the Administrative Agent notice of such a determination and adjustment and the Administrative Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, the Lead Borrower may, by notice to such affected Lender (i) require such Lender to furnish to the Lead Borrower a statement setting forth the basis for adjusting such Adjusted Term SOFR and the method for determining the amount of such adjustment, or (ii) repay the SOFR Loans with respect to which such adjustment is made (together with any amounts due under Section 2.09).

(b) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain SOFR Loans or to continue such funding or maintaining, or to determine or charge interest rates at the Adjusted Term SOFR, such Lender shall give notice of such changed circumstances to the Lead Borrower and the Administrative Agent, and the Administrative Agent promptly shall transmit the notice to each other Lender and (i) in the case of any SOFR Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such SOFR Loans, and interest upon the SOFR Loans of such Lender thereafter shall accrue interest at the rate then applicable to Reference Rate Loans of the same type hereunder, and (ii) the Lead Borrower shall not be entitled to elect the SOFR Option (including in any borrowing, conversion or continuation then being requested) until such Lender determines that it would no longer be unlawful or impractical to do so.

(a) The obligations of the Loan Parties under this Section 2.11 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

ARTICLE III

[INTENTIONALLY OMITTED]

ARTICLE IV

APPLICATION OF PAYMENTS; DEFAULTING LENDERS

Section 4.01 Payments; Computations and Statements.

(a) The Borrowers will make each payment under this Agreement not later than 2:00 p.m. (New York City time) on the day when due, in lawful money of the United States of America and in immediately available funds, to the Administrative Agent's Accounts. All payments received by the Administrative Agent after 2:00 p.m. (New York City time) on any Business Day will be credited to the Loan Account on the next succeeding Business Day. All payments shall be made by the Borrowers without set-off, counterclaim, recoupment, deduction or other defense to the Agents and the Lenders. After receipt, the Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal ratably to the Lenders in accordance with their Pro Rata Shares and like funds relating to the payment of any other amount payable to any Lender to such Lender, in each case to be applied in accordance with the terms of this Agreement, provided that the Administrative Agent will cause to be distributed all interest and fees received from or for the account of the Borrowers not less than once each month and in any event promptly after receipt thereof. The Lenders and the Borrowers hereby authorize the Administrative Agent to, and the Administrative Agent may, from time to time, charge the Loan Account of the Borrowers with any amount due and payable by the Borrowers under any Loan Document. Each of the Lenders and the Borrowers agree that the Administrative Agent shall have the right to make such charges whether or not any Default or Event of Default shall have occurred and be continuing or whether any of the conditions precedent in Section 5.02 have been satisfied. Any amount charged to the Loan Account of the Borrowers shall be deemed an Obligation. Whenever any payment to be made under any such Loan Document shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall in such case be included in the computation of interest or fees, as the case may be. All computations of fees shall be made by the Administrative Agent on the basis of a year of 360 days for the actual number of days. Each determination by the Administrative Agent of an interest rate or fees hereunder shall be conclusive and binding for all purposes in the absence of manifest error.

(b) The Administrative Agent shall provide the Borrowers, promptly after the end of each calendar month, a summary statement (in the form from time to time used by the Administrative Agent) of the opening and closing daily balances in the Loan Account of the Borrowers during such month, the amounts and dates of all Loans made to the Borrowers during such month, the amounts and dates of all payments on account of the Loans to the Borrowers during such month and the Loans to which such payments were applied, the amount of interest accrued on the Loans to the Borrowers during such month, and the amount and nature of any charges to the Loan Account made during such month on account of fees, commissions, expenses and other Obligations. All entries on any such statement shall be presumed to be correct and, 30 days after the same is sent, shall be final and conclusive absent manifest error.

Section 4.02 Sharing of Payments. If any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Obligation in excess of its ratable share of payments on account of similar obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in such similar obligations held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that (a) if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid by the purchasing Lender in respect of the total amount so recovered and (b) the provisions of this Section shall not be construed to apply to (i) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement (including any payment of an amendment, consent or waiver fee to consenting Lenders pursuant to an effective amendment, consent or waiver with respect to this Agreement), or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans, other than to any Loan Party or any Subsidiary thereof (as to which the provisions of this Section shall apply). The Borrowers agree that any Lender so purchasing a participation from another Lender pursuant to this Section may, to the fullest extent permitted by law, exercise all of its rights (including the Lender's right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrowers in the amount of such participation.

Section 4.03 Apportionment of Payments.

(a) All payments of principal and interest in respect of outstanding Loans, all payments of fees (other than the fees set forth in Section 2.06 hereof) and all other payments in respect of any other Obligations, shall be allocated by the Administrative Agent among such of the Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares or otherwise as provided herein or, in respect of payments not made on account of Loans, as designated by the Person making payment when the payment is made.

(b) After the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and upon the direction of the Collateral Agent or the Required Lenders shall, apply all payments in respect of any Obligations, including without limitation, all proceeds of the Collateral, subject to the provisions of this Agreement, (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to the Agents until paid in full; (ii) second, to pay interest then due and payable in respect of the Collateral Agent Advances until paid in full; (iii) third, to pay principal of the Collateral Agent Advances until paid in full; (iv) fourth, ratably to pay the Obligations in respect of any fees (other than any Applicable Premium), expense reimbursements, indemnities and other amounts then due and payable to the Term Loan Lenders until paid in full; (v) fifth, ratably to pay interest then due and payable in respect of the Term Loan until paid in full; (vi) sixth, ratably to pay the Obligations in respect of any Applicable Premium then due and payable to the Lenders until paid in full; (vii) seventh, ratably to pay principal of the Term Loan until paid in full; and (viii) eighth, to the ratable payment of all other Obligations then due and payable.

(c) For purposes of Section 4.03(b), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding, except to the extent that default or overdue interest (but not any other interest) and loan fees, each arising from or related to a default, are disallowed in any Insolvency Proceeding; provided, however, that for the purposes of clause (viii), "paid in full" means payment in cash of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, whether or not the same would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(d) In the event of a direct conflict between the priority provisions of this Section 4.03 and other provisions contained in any other Loan Document, it is the intention of the parties hereto that both such priority provisions in such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of Section 4.03 shall control and govern.

Section 4.04 Lead Borrower; Joint and Several Liability of the Borrowers.

(a) Each Borrower hereby irrevocably appoints the Lead Borrower as the borrowing agent and attorney-in-fact for the Borrowers which appointment shall remain in full force and effect unless and until the Agents shall have received prior written notice signed by all of the Borrowers that such appointment has been revoked and that another Borrower has been appointed "Lead" Borrower. Each Borrower hereby irrevocably appoints and authorizes the Lead Borrower (i) to provide to the Agents and receive from the Agents all notices with respect to Loans obtained for the benefit of any Borrower and all other notices, certificates, and instructions under this Agreement and (ii) to take such action as the Lead Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement.

(b) Each Borrower hereby accepts joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Agents and the Lenders under this Agreement and the other Loan Documents, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations. Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 4.04), it being the intention of the parties hereto that all of the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them. If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation. Subject to the terms and conditions hereof, the Obligations of each of the Borrowers under the provisions of this Section 4.04 constitute the absolute and unconditional, full recourse Obligations of each of the Borrowers, enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement, the other Loan Documents or any other circumstances whatsoever.

(c) The provisions of this Section 4.04 are made for the benefit of the Agents, the Lenders and their successors and assigns, and may be enforced by them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Agents, the Lenders or such successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any of the other Borrowers or to exhaust any remedies available to it or them against any of the other Borrowers or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy.

(d) Lead Borrower agrees that the Co-Borrower shall be entitled to assert a right of contribution against such Borrower in respect of any payment in respect of the Obligations made by Co-Borrower under this Agreement or any other Loan Document, which right shall be subject to the other terms of this Section 4.04(d). Each of the Borrowers hereby agrees that it will not enforce any of its rights of contribution or subrogation against the other Borrowers with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Agents or the Lenders with respect to any of the Obligations or any Collateral, until the occurrence of the Termination Date. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Agents or the Lenders hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior occurrence of the Termination Date.

ARTICLE V

CONDITIONS TO LOANS

Section 5.01 Conditions Precedent to Effectiveness. This Agreement shall become effective as of the Business Day (the "Effective Date") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agents:

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Effective Date all fees, costs, and expenses then payable pursuant to the Fee Letter and Section 12.04, including the fees and expenses of Ropes & Gray LLP; provided that if all other conditions precedent in this Section 5.01 are satisfied other than the conditions in this Section 5.01(a) as a result of the Effective Date being on a day that is not a Business Day or occurring after business hours, then the Lenders agree to allow the payment of fees and expenses due and payable pursuant to this Section 5.01(a) to be made on the Business Day immediately following the Effective Date and the Lead Borrower agrees to make such payments on the Business Day immediately following the Effective Date.

(b) Representations and Warranties; No Event of Default. The following statements shall be true and correct: (i) the representations and warranties of the Loan Parties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the Effective Date are true and correct on and as of the Effective Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) no Default or Event of Default shall have occurred and be continuing on the Effective Date or would result from this Agreement or the other Loan Documents becoming effective in accordance with its or their respective terms.

(c) Delivery of Documents. The Agents shall have received on or before the Effective Date the following, each in form and substance satisfactory to the Agents and, unless indicated otherwise, dated the Effective Date and, if applicable, duly executed by the Persons party thereto:

(i) this Agreement;

(ii) a Security Agreement, together with the original stock certificates representing all of the Equity Interests and all promissory notes required to be pledged thereunder, accompanied by undated stock powers executed in blank and other proper instruments of transfer;

(iii) evidence satisfactory to the Collateral Agent of the filing of appropriate financing statements on Form UCC 1 in such office or offices as may be necessary or, in the opinion of the Collateral Agent, desirable to perfect the security interests purported to be created by each Security Agreement;

(iv) the results of searches for any effective UCC financing statements, tax Liens or judgment Liens filed against any Loan Party or its property, which results shall not show any such Liens (other than Permitted Liens acceptable to the Collateral Agent);

(v) a Perfection Certificate;

(vi) the Fee Letter;

(vii) the Merger Agreement Collateral Assignment;

(viii) the R&W Merger Agreement Collateral Assignment;

(ix) the management rights letter, dated as of the date hereof, among the Loan Parties and the Agents, as amended, amended and restated, supplemented or otherwise modified from time to time (the "VCOC Management Rights Agreement");

(x) a certificate of an Authorized Officer of each Loan Party (such certificate, a "Secretary's Certificate"), (A) certifying as to copies of the Governing Documents of such Loan Party, together with all amendments thereto (including, without limitation, a true and complete copy of the charter, certificate of formation, certificate of limited partnership or other publicly filed organizational document of each Loan Party certified as of a recent date not more than 30 days prior to the Effective Date by an appropriate official of the jurisdiction of organization of such Loan Party which shall set forth the same complete name of such Loan Party as is set forth herein), (B) certifying as to a copy of the resolutions or written consents of such Loan Party authorizing (1) the borrowings hereunder and the transactions contemplated by the Loan Documents to which such Loan Party is or will be a party, and (2) the execution, delivery and performance by such Loan Party of each Loan Document to which such Loan Party is or will be a party and the execution and delivery of the other documents to be delivered by such Person in connection herewith and therewith, (C) certifying as to the names and true signatures of the representatives of such Loan Party authorized to sign each Loan Document (in the case of the Lead Borrower, including, without limitation, Notices of Borrowing, SOFR Notices and all other notices under this Agreement and the other Loan Documents) to which such Loan Party is or will be a party and the other documents to be executed and delivered by such Loan Party in connection herewith and therewith, together with evidence of the incumbency of such authorized officers and (D) attaching certificates of the appropriate official(s) of the jurisdiction of organization and, except to the extent such failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, each jurisdiction of foreign qualification of each Loan Party certifying as of a recent date not more than 30 days prior to the Effective Date as to the subsistence in good standing of, and the payment of taxes by, such Loan Party in such jurisdictions;

(xi) a certificate of an Authorized Officer (such certificate, the "Effective Date Closing Certificate") of the Lead Borrower certifying:

(A) that the Leverage Ratio does not exceed 4.75:1.00 on a pro forma basis after giving effect to the Loans made on the Closing Date and Closing Date Merger, and attached to such Effective Date Closing Certificate are reasonably detailed calculations of the Leverage Ratio;

(B) that (A) attached to such Closing Certificate are true, correct and complete copies of (1) the Merger Documents and (2) the other Material Contracts, in each case, as in effect on the Effective Date (B) such agreements remain in full force and effect and that none of the Loan Parties has breached or defaulted in any of its obligations under such agreements; and

(C) as to the matters set forth in Sections 5.02(b) and (d).

(xii) opinions of Blank Rome LLP and Nevada local counsel, as counsel to the Loan Parties, as to such matters as the Collateral Agent may reasonably request;

(xiii) [reserved];

(xiv) [reserved]; and

(xv) such other agreements, instruments, approvals, opinions and other documents, each satisfactory to the Agents in form and substance, as any Agent may reasonably request.

(d) Material Adverse Effect. The Collateral Agent shall have determined, in its sole judgment, that no event or development shall have occurred since December 31, 2022 which could reasonably be expected to have a Material Adverse Effect.

(e) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Loans, or the conduct of the Loan Parties' business, or the consummation of any of the underlying transactions, shall have been obtained and shall be in full force and effect.

(f) Management Reference Checks. The Collateral Agent shall have received satisfactory reference checks for, and shall have had an opportunity to meet with, key management of each Loan Party.

(g) Due Diligence. The Agents shall have completed their business, legal and collateral due diligence with respect to each Loan Party and the results thereof shall be acceptable to the Agents, in their sole and absolute discretion.

(h) Financial Statements. The Agents shall have received the Financial Statements.

Section 5.02 Conditions Precedent to Closing Date. The obligation of each Lender to fund its Pro Rata Share of the Loans is subject to the fulfillment, in a manner satisfactory to the Administrative Agent, of each of the following conditions precedent (the date such conditions are satisfied and the Loan is made, the "Closing Date"):

(a) Payment of Fees, Etc. The Borrowers shall have paid on or before the Closing Date all fees, costs, and expenses then payable pursuant to the Fee Letter and Section 12.04, including the fees and expenses of Ropes & Gray LLP.

(b) Material Adverse Effect. The Collateral Agent shall have determined, in its sole judgment, that no event or development shall have occurred since the Effective Date which could reasonably be expected to have a Material Adverse Effect.

(c) Joinder and Assumption Agreement. The Administrative Agent shall have received a duly executed copy of (x) the Joinder and Assumption Agreement with respect to Healthy Offers and (y) a Joinder Agreement with respect to Merger Sub.

(d) Closing Date Secretary's Certificate. The Administrative Agent shall have received a Secretary's Certificate from an Authorized Officer of the Company.

(e) Closing Date Officer's Certificate. The Administrative Agent shall have received a certificate of an Authorized Officer of the Lead Borrower certifying as to the matters set forth in Sections 5.02(b), (f), (i), and (j).

(f) Consummation of Closing Date Merger. Concurrently with the making of the initial Loans, (i) the Closing Date Merger shall have been consummated pursuant to the Merger Documents (as in effect on the Effective Date) and (ii) the proceeds of the initial Loans shall have been applied in full to pay the Merger Consideration (as defined in the Merger Agreement) payable pursuant to the Merger Documents.

(g) Notice of Borrowing. The Administrative Agent shall have received a timely Notice of Borrowing pursuant to Section 2.02 hereof.

(h) Solvency Certificate. A certificate of the chief financial officer of the Lead Borrower, certifying as to the solvency of the Lead Borrower and its Subsidiaries (taken as a whole) after giving effect to the Loans made on the Closing Date and the consummation of the Closing Date Merger.

(i) Minimum Liquidity. On a pro forma basis after giving effect to the funding of Loans on the Closing Date and consummation of the Closing Date Merger, the aggregate amount of unrestricted cash on-hand of the Loan Parties is at least $12,500,000.

(j) Representations and Warranties; No Event of Default. The following statements shall be true and correct, and the submission by the Lead Borrower to the Administrative Agent of a Notice of Borrowing with respect to the Loans, and the Borrowers' acceptance of the proceeds of such Loan that: (i) the representations and warranties contained in Article VI and in each other Loan Document, certificate or other writing delivered to any Secured Party pursuant hereto or thereto on or prior to the Closing Date are true and correct on and as of the Closing Date as though made on and as of the Closing Date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty shall be true and correct on and as of such earlier date) and (ii) at the time of and after giving effect to the making of such Loan and the application of the proceeds thereof, no Default or Event of Default has occurred and is continuing or would result from the making of the Loan to be made on the Closing Date.

(k) Legality. The making of such Loan shall not contravene any law, rule or regulation applicable to any Secured Party.

(l) KYC. The Administrative Agent shall have received at least two (2) Business Days prior to the Closing Date all documentation and other information in respect of the Loan Parties (including the Company) required under applicable "know your customer" and anti-money laundering rules and regulations (including the USA PATRIOT Act).

(m) The Administrative Agent shall have received a duly executed copy of the Intercompany Note.

(n) Legal Opinions. Opinion of Blank Rome LLP and Nevada local counsel, counsel to the Company, as to such matters as the Collateral Agent may reasonably request.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

Section 6.01 Representations and Warranties. Each Loan Party hereby represents and warrants to the Secured Parties as follows:

(a) Organization, Good Standing, Etc. Each Loan Party (i) is a corporation, limited liability company or limited partnership duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, (ii) has all requisite power and authority to conduct its business as now conducted and as presently contemplated and, in the case of the Borrowers, to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except (solely for the purposes of this subclause (iii)) where the failure to be so qualified and in good standing could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization, Etc. The execution, delivery and performance by each Loan Party of each Loan Document to which it is or will be a party, (i) have been duly authorized by all necessary action, (ii) do not and will not contravene (A) any of its Governing Documents, (B) any applicable Requirement of Law or (C) any Contractual Obligation binding on or otherwise affecting it or any of its properties, (iii) do not and will not result in or require the creation of any Lien (other than pursuant to any Loan Document) upon or with respect to any of its properties, and (iv) do not and will not result in any default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal of any permit, license, authorization or approval applicable to its operations or any of its properties, except, in the case of clauses (ii)(B), (ii)(C) and (iv), to the extent where such contravention, default, noncompliance, suspension, revocation, impairment, forfeiture or nonrenewal could not reasonably be expected to have a Material Adverse Effect.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required in connection with the due execution, delivery and performance by any Loan Party of any Loan Document to which it is or will be a party other than filings and recordings with respect to Collateral to be made, or otherwise delivered to the Collateral Agent for filing or recordation, on the Effective Date.

(d) Enforceability of Loan Documents. This Agreement is, and each other Loan Document to which any Loan Party is or will be a party, when delivered hereunder, will be, a legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(e) Capitalization. The authorized Equity Interests of the Lead Borrower and each of its Subsidiaries and the issued and outstanding Equity Interests of the Lead Borrower and each of its Subsidiaries are as set forth on Schedule 6.01(e). All of the issued and outstanding shares of Equity Interests of the Lead Borrower and each of its Subsidiaries have been validly issued and are fully paid and nonassessable, and the holders thereof are not entitled to any preemptive, first refusal or other similar rights. All Equity Interests of such Subsidiaries of the Lead Borrower are owned by the Lead Borrower free and clear of all Liens (other than Permitted Specified Liens). Except as described on Schedule 6.01(e), there are no outstanding debt or equity securities of the Lead Borrower or any of its Subsidiaries and no outstanding obligations of the Lead Borrower or any of its Subsidiaries convertible into or exchangeable for, or warrants, options or other rights for the purchase or acquisition from the Lead Borrower or any of its Subsidiaries, or other obligations of the Lead Borrower or any of its Subsidiaries to issue, directly or indirectly, any shares of Equity Interests of the Lead Borrower or any of its Subsidiaries.

(f) Litigation. Except as set forth in Schedule 6.01(f), there is no pending or, to the best knowledge of any Loan Party, threatened action, suit or proceeding affecting any Loan Party or any of its properties before any court or other Governmental Authority or any arbitrator that (i) if adversely determined, could reasonably be expected to have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby.

(g) Financial Statements; No Material Adverse Effect.

(i) The Financial Statements (OptimizeRx), copies of which have been delivered to each Agent and each Lender, fairly present the consolidated financial condition of the Lead Borrower and its Subsidiaries as at the respective dates thereof and the consolidated results of operations of the Lead Borrower and its Subsidiaries for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other liabilities (including, without limitation, Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Lead Borrower and its Subsidiaries are set forth in the Financial Statements (OptimizeRx). Since December 31, 2022 no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(ii) The Financial Statements (Healthy), copies of which have been delivered to each Agent and each Lender, fairly present the consolidated financial condition of the Company as at the respective dates thereof and the consolidated results of operations of the Company for the fiscal periods ended on such respective dates, all in accordance with GAAP. All material indebtedness and other liabilities (including, without limitation, Indebtedness, liabilities for taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of the Company are set forth in the Financial Statements (Healthy).

(iii) The Financial Statements (Pro Forma) have been prepared in good faith, based on assumptions believed by the Lead Borrower to be reasonable as of the date of delivery thereof, and presents fairly in all material respects on a pro forma basis the estimated balance sheet of Lead Borrower and its Subsidiaries (including the Company) as of June 30, 2023.

(iv) The Financial Statements (Projections) when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that: (a) no forecasts are to be viewed as facts, (b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, (c) no assurance can be given that any particular forecasts will be realized and (d) actual results may differ and such differences may be material.

(v) Since December 31, 2022 no event or development has occurred that has had or could reasonably be expected to have a Material Adverse Effect.

(h) Compliance with Law, Etc. No Loan Party or any of its Subsidiaries is in violation of (i) any of its Governing Documents, (ii) any Requirement of Law, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, or (iii) any term of any material Contractual Obligation (including, without limitation, any Material Contract) binding on or otherwise affecting it or any of its properties, except where the failure to so comply could not reasonably be expected to have a Material Adverse Effect, and no default or event of default has occurred and is continuing thereunder.

(i) ERISA. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) each Loan Party and each Employee Plan is in compliance with all Requirements of Law in all material respects, including ERISA, the Internal Revenue Code and the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010, (ii) no ERISA Event has occurred nor is reasonably expected to occur with respect to any Employee Plan or Multiemployer Plan, (iii) the most recent annual report (Form 5500 Series) with respect to each Pension Plan, including any required Schedule B (Actuarial Information) thereto, copies of which have been filed with the Internal Revenue Service and delivered to the Agents, is complete and correct and fairly presents the funding status of such Pension Plan, and since the date of such report, there has been no material adverse change in such funding status, (iv) copies of each agreement entered into with the PBGC, the U.S. Department of Labor or the Internal Revenue Service with respect to any Pension Plan have been delivered to the Agents, (v) each Employee Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has been determined by the Internal Revenue Service to be qualified under Section 401(a) of the Internal Revenue Code and the trust related thereto is exempt from federal income tax under Section 501(a) of the Internal Revenue Code, (vi) no Loan Party or any of its ERISA Affiliates has incurred any liability to the PBGC which remains outstanding other than the payment of premiums, and there are no premium payments which have become due which are unpaid, and (vii) except as required by Section 4980B of the Internal Revenue Code, no Loan Party maintains an employee welfare benefit plan (as defined in Section 3(1) of ERISA) that provides health benefits (through the purchase of insurance or otherwise) for any retired or former employee of any Loan Party or has any obligation to provide any such benefits for any current employee after such employee's termination of employment.

(j) Taxes, Etc. (i) All Tax returns and other reports required by applicable Requirements of Law to be filed by any Loan Party have been timely filed and (ii) all Taxes imposed upon any Loan Party or any property of any Loan Party which have become due and payable on or prior to the date hereof have been paid, except (A) unpaid Taxes in an aggregate amount at any one time not in excess of $50,000, and (B) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof on the Financial Statements in accordance with GAAP.

(k) Regulations T, U and X. No Loan Party is or will be engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation T, U or X), and no proceeds of any Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or for any purpose that violates, or is inconsistent with, the provisions of Regulation T, U and X.

(l) Nature of Business. No Loan Party is engaged in any business other than as set forth on Schedule 6.01(l).

(m) Adverse Agreements, Etc. No Loan Party or any of its Subsidiaries is a party to any Contractual Obligation or subject to any restriction or limitation in any Governing Document or any judgment, order, regulation, ruling or other requirement of a court or other Governmental Authority, which (either individually or in the aggregate) has, or in the future could reasonably be expected (either individually or in the aggregate) to have, a Material Adverse Effect.

(n) Permits, Etc. Each Loan Party has, and is in compliance with, all permits, licenses, authorizations, approvals, entitlements and accreditations, including Environmental Permits, required for such Person lawfully to own, lease, manage or operate, or to acquire, each business and Facility currently owned, leased, managed or operated, or to be acquired, by such Person, except to the extent the failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect. No condition exists or event has occurred which, in itself or with the giving of notice or lapse of time or both, would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such permit, license, authorization, approval, entitlement or accreditation, including any such Environmental Permit, and there is no claim that any of the foregoing is not in full force and effect.

(o) Properties. Each Loan Party has good and marketable title to, valid leasehold interests in, or valid licenses to use, all property and assets material to its business, free and clear of all Liens, except Permitted Liens. All such properties and assets are in good working order and condition, ordinary wear and tear excepted.

(p) Employee and Labor Matters. Except as set forth on Schedule 6.01(p), (i) each Loan Party and its Subsidiaries is in compliance with all Requirements of Law in all material respects pertaining to employment and employment practices, terms and conditions of employment, wages and hours, and occupational safety and health, (ii) no Loan Party or any Subsidiary is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of the employees of any Loan Party of Subsidiary, (iii) there is no unfair labor practice complaint pending or, to the best knowledge of any Loan Party, threatened against any Loan Party or any Subsidiary before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any Subsidiary which arises out of or under any collective bargaining agreement, (iv) there has been no strike, work stoppage, slowdown, lockout, or other labor dispute pending or threatened against any Loan Party or any Subsidiary, and (v) to the best knowledge of each Loan Party, no labor organization or group of employees has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or any other labor relations tribunal or authority. No Loan Party or Subsidiary has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or any similar Requirement of Law, which remains unpaid or unsatisfied. All payments due from any Loan Party or Subsidiary on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party or Subsidiary, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(q) Environmental Matters. Except as set forth on Schedule 6.01(q) hereto, (i) no Loan Party or any of its Subsidiaries is in violation of any Environmental Law, (ii) each Loan Party and each of its Subsidiaries has, and is in compliance with, all Environmental Permits for its respective operations and businesses, except to the extent any failure to have or be in compliance therewith could not reasonably be expected to have a Material Adverse Effect; (iii) there has been no Release or threatened Release of Hazardous Materials on, in, at, under or from any properties currently or formerly owned, leased or operated by any Loan Party, its Subsidiaries or a respective predecessor in interest or at any disposal or treatment facility which received Hazardous Materials generated by any Loan Party, its Subsidiaries or any respective predecessor in interest, which in any case of the foregoing could reasonably be expected to have a Material Adverse Effect; (iv) there are no pending or threatened Environmental Claims against, or Environmental Liability of, any Loan Party, its Subsidiaries or any respective predecessor in interest that could reasonably be expected to have a Material Adverse Effect; (v) neither any Loan Party nor any of its Subsidiaries is performing or responsible for any Remedial Action that could reasonably be expected to have a Material Adverse Effect; and (vi) the Loan Parties have made available to the Collateral Agent and Lenders true and complete copies of all material environmental reports, audits and investigations in the possession or control of any Loan Party or any of its Subsidiaries with respect to the operations and business of the Loan Parties and its Subsidiaries.

(r) Insurance. Each Loan Party maintains all insurance required by Section 7.01(h). Schedule 6.01(r) sets forth a list of all such insurance maintained by or for the benefit of each Loan Party.

(s) Use of Proceeds. The proceeds of the Loans shall be used to (a) consummate the Closing Date Merger (b) pay fees and expenses in connection with the transactions contemplated hereby and (c) fund working capital of the Borrowers.

(t) Solvency. After giving effect to the transactions contemplated by this Agreement, the Merger Documents and after giving effect to the Loan on the Closing Date, the Lead Borrower and its Subsidiaries (taken as a whole) are, Solvent. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

(u) Intellectual Property. Except as set forth on Schedule 6.01(u), each Loan Party owns or licenses or otherwise has the right to use all Intellectual Property rights that are necessary for the operation of its business, and, to the knowledge of each Loan Party, without infringement upon the Intellectual Property rights of any other Person with respect thereto, except for such infringements and conflicts which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Set forth on Schedule 6.01(u) is a complete and accurate list of (i) each item of Registered Intellectual Property owned by each Loan Party; (ii) each material work of authorship owned by each Loan party and which is not Registered Intellectual Property, and (iii) each material Intellectual Property Contract to which each Loan Party is bound. To the knowledge of each Loan Party, no trademark, copyright, patent or other Intellectual Property now employed, or now contemplated to be employed, by any Loan Party infringes upon the Intellectual Property rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened, except for such infringements and conflicts which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. To the knowledge of each Loan Party, no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code pertaining to Intellectual Property is pending or proposed, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Material Contracts. Set forth on Schedule 6.01(v) is a complete and accurate list of all Material Contracts of each Loan Party, showing the parties and subject matter thereof and amendments and modifications thereto. Each such Material Contract (i) is in full force and effect and is binding upon and enforceable against each Loan Party that is a party thereto and, to the best knowledge of such Loan Party, all other parties thereto in accordance with its terms, (ii) has not been otherwise amended or modified, and (iii) is not in default due to the action of any Loan Party or, to the best knowledge of any Loan Party, any other party thereto.

(w) Investment Company Act. None of the Loan Parties is (i) an “investment company” or an “affiliated person” or “promoter” of, or “principal underwriter” of or for, an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended, or (ii) subject to regulation under any Requirement of Law that limits in any respect its ability to incur Indebtedness or which may otherwise render all or a portion of the Obligations unenforceable.

(x) Customers and Suppliers. There exists no actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship between (i) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (ii) any Loan Party, on the one hand, and any supplier or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party; and there exists no present state of facts or circumstances that could give rise to or result in any such termination, cancellation, limitation, modification or change.

(y) Consummation of Closing Date Merger. The Lead Borrower has delivered to the Agents complete and correct copies of the Merger Documents, including all schedules and exhibits thereto. The Merger Documents set forth the entire agreement and understanding of the parties thereto relating to the subject matter thereof, and there are no other agreements, arrangements or understandings, written or oral, relating to the matters covered thereby. The execution, delivery and performance of the Merger Documents has been duly authorized by all necessary action (including, without limitation, the obtaining of any consent of stockholders or other holders of Equity Interests required by law or by any applicable corporate or other organizational documents) on the part of each such Person. No authorization or approval or other action by, and no notice to filing with or license from, any Governmental Authority is required to consummate the Closing Date Merger other than such as have been obtained on or prior to the Effective Date. Each Merger Document is the legal, valid and binding obligation of the parties thereto, enforceable against such parties in accordance with its terms. All conditions precedent to the Merger Agreement have been fulfilled or (with the prior written consent of the Agents) waived, no Merger Document has been amended or otherwise modified, and there has been no breach of any material term or condition of any Merger Document.

(z) Sanctions; Anti-Corruption and Anti-Money Laundering Laws. None of any Loan Party, any Subsidiary thereof, any of their respective directors, officers or employees, nor, to the knowledge of any Loan Party, any of their respective agents or Affiliates, (i) is a Sanctioned Person or currently the subject or target of any Sanctions, (ii) has assets located in a Sanctioned Country, (iii) conducts any business with or for the benefit of any Sanctioned Person, (iv) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (v) is a "Foreign Shell Bank" within the meaning of the USA Patriot Act, i.e., a foreign bank that does not have a physical presence in any country and that is not affiliated with a bank that has a physical presence and an acceptable level of regulation and supervision, or (vi) is a Person that resides in or is organized under the laws of a jurisdiction designated by the United States Secretary of the Treasury under Section 311 or 312 of the USA Patriot Act as warranting special measures due to money laundering concerns. Each Loan Party and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by each Loan Party and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws and Anti-Money Laundering Law. Each Loan Party and each Subsidiary is in compliance with all Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws. Each Loan Party and each Affiliate, officer, employee or director acting on behalf of any Loan Party is (and is taking no action that would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, United Kingdom, United Nations, European Union, German, Canadian, Australian and all other internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA Patriot Act. In addition, no Loan Party or any Subsidiary is engaged in any kind of activities or business of or with any Person or in any country or territory that is subject to any sanctions administered by OFAC, the United Kingdom, the European Union, Germany, Canada, Australia or the United Nations.

(aa) Anti-Bribery and Corruption.

(i) Neither any Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee, or any other Person acting on behalf of any Loan Party, has offered, promised, paid, given or authorized the payment or giving of any money or other thing of value, directly or indirectly, to or for the benefit of any Person, including without limitation, any employee, official or other Person acting on behalf of any Governmental Authority, or otherwise engaged in any activity that may violate any Anti-Corruption Law.

(ii) Neither any Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee, or any other Person acting on behalf of any Loan Party, has engaged in any activity that would breach any Anti-Corruption Laws.

(iii) To the best of each Loan Party's knowledge and belief, there is no pending or, to the best knowledge of any Loan Party, threatened action, suit, proceeding or investigation before any court or other Governmental Authority against any Loan Party or any of its directors, officers, employees or other Person acting on its behalf that relates to a potential violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions.

(iv) The Loan Parties will not directly or indirectly use, lend or contribute the proceeds of the Advances for any purpose that would breach the Anti-Bribery and Corruption Laws.

(bb) Compliance with Health Care Laws and Privacy Obligations.

(i) Each Loan Party is in compliance in all material respects with all applicable Health Care Laws. There are no Proceedings by or before a Governmental Authority pending or threatened in writing against any Loan Party that allege a violation of applicable Health Care Laws, and no Loan Party has received notice of any allegation of a violation of applicable Health Care Laws from any Governmental Authority or any other Person.

(ii) No Loan Party nor, to the knowledge of any Loan Party, any of its respective owners, officers, directors, employees or agents (i) has solicited, received, paid, or offered any remuneration (including any kickback, bribe, rebate, payoff, influence payment or inducement) directly or indirectly, overtly or covertly, in cash or in kind, to any Person to induce such Person to refer an individual to a Person for the furnishing or arranging for the furnishing of any item or service in violation of any Health Care Law; (ii) has been a party to any individual or corporate integrity agreement, settlement, judgment, deferred prosecution agreement, non-prosecution agreement, consent decree, monitoring agreement or certification of compliance agreement, or Order imposed by any Governmental Authority relating to any non-compliance with Health Care Laws, (iii) has been or is currently debarred, suspended, or excluded from participation in any government procurement program or any Payment Program, nor is any such exclusion, debarment, or suspension threatened, (iv) has been assessed, or threatened with assessment of a civil monetary penalty under Section 1128A of the Social Security Act or any regulations promulgated thereunder or (v) has been convicted of or entered a plea of guilty or *nolo contendere* to any criminal or civil offense relating to the provision of healthcare items or services.

(iii) No Loan Party provides products or services to any Governmental Authority, bills claims to or collects payment from any Payment Program or permits or otherwise advises any contractors to submit bills to any Payment Program.

(iv) Each Loan Party has established and maintains commercially reasonable processes to support its performance of its Contractual Obligations and obligations under applicable Health Care Laws. Each Loan Party has adopted and published a privacy notice and maintains policies that accurately describe their privacy and security practices, and has materially complied and is in material compliance with those notices and policies. Each Loan Party has implemented all confidentiality, security and other protective measures required under applicable Privacy Obligations, including obtaining individuals' consent and/or authorization to use and disclose Personal Information if required by applicable Requirements of Law, including applicable Privacy Obligations.

(v) No Loan Party is a "covered entity" under HIPAA. Each Loan Party that is a "business associate" under HIPAA is in material compliance with HIPAA and has executed business associate agreements in accordance with HIPAA and to the extent required under HIPAA. No Loan Party or any counterparty to any such business associate agreement has materially breached any such business associate agreement. Each Loan Party that is a business associate under HIPAA has completed security risk analyses in compliance with HIPAA.

(vi) The Company materially complies with all applicable Privacy Obligations with respect to Processing of Personal Information. No Loan Party de-identifies or aggregates "protected health information" under HIPAA or uses "protected health information" under HIPAA for marketing or advertising purposes.

(vii) No Loan Party has experienced a Security Event of any Personal Information that is collected, used, or held for use by or on behalf of the Loan Parties. Each of the Loan Parties periodically assesses risks to privacy and the confidentiality and security of Personal Information, and in the last three (3) years, no such assessment has resulted in findings of material deficiency.

(viii) Each Loan Party has and has maintained valid, unexpired and enforceable rights to use all data obtained from third parties, including aggregated, de-identified and anonymized data, used or held for use in connection with its business, in each case, without conflict with any Requirement of Law, contract or rights of any Person.

(cc) Full Disclosure. Each Loan Party has disclosed to the Agents all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party to the Agents (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which it was made, not misleading.

(dd) Cash Management Accounts. The Cash Management Accounts of the Loan Parties are set forth on Schedule 6.01(dd).

ARTICLE VII

COVENANTS OF THE LOAN PARTIES AND OTHER COLLATERAL MATTERS

Section 7.01 Affirmative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party will, unless the Required Lenders shall otherwise consent in writing:

(a) Reporting Requirements. Furnish to each Agent and each Lender:

(i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Lead Borrower and its Subsidiaries commencing, in the case of clause (x) below, with the first fiscal month of the Lead Borrower and its Subsidiaries ending after the Effective Date and in the case of clause (y) below, with the first full fiscal month of the Lead Borrower and its Subsidiaries ending after the Effective Date, (x) internally prepared consolidated balance sheets, statements of operations, statements of changes in stockholders' equity and statements of cash flows as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the Projections, all in reasonable detail and certified by an Authorized Officer of the Lead Borrower as fairly presenting, in all material respects, the financial position of the Lead Borrower and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of the Lead Borrower and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments and (y) a report of key performance indicators by category during such fiscal month for the business of the Lead Borrower and its Subsidiaries and any additional financial information as may be reasonably requested by the Administrative Agent;

(ii) as soon as available and in any event within 45 days after the end of each fiscal quarter of the Lead Borrower and its Subsidiaries commencing with the first fiscal quarter of the Lead Borrower and its Subsidiaries ending after the Effective Date, consolidated balance sheets, statements of operations, statements of changes in stockholders' equity and statements of cash flows of the Lead Borrower and its Subsidiaries as at the end of such quarter, and for the period commencing at the end of the immediately preceding Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year and (B) the Projections, all in reasonable detail and certified by an Authorized Officer of the Lead Borrower as fairly presenting, in all material respects, the financial position of the Lead Borrower and its Subsidiaries as of the end of such quarter and the results of operations and cash flows of the Lead Borrower and its Subsidiaries for such quarter and for such year-to-date period, in accordance with GAAP applied in a manner consistent with that of the most recent audited financial statements of the Lead Borrower and its Subsidiaries furnished to the Agents and the Lenders, subject to the absence of footnotes and normal year-end adjustments;

(iii) as soon as available, and in any event within 90 days after the end of each Fiscal Year of the Lead Borrower and its Subsidiaries, consolidated balance sheets, statements of operations, statements of changes in stockholders' equity and statements of cash flows of the Lead Borrower and its Subsidiaries as at the end of such Fiscal Year, setting forth in each case in comparative form the figures for the corresponding date or period set forth in (A) the financial statements for the immediately preceding Fiscal Year, and (B) the Projections, all in reasonable detail and prepared in accordance with GAAP, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by the Lead Borrower and satisfactory to the Agents (which report and opinion shall not include (1) any qualification, exception or explanatory paragraph expressing substantial doubt about the ability of the Lead Borrower or any of its Subsidiaries to continue as a going concern or any qualification or exception as to the scope of such audit, or (2) any qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of which would be to cause any noncompliance with the provisions of Section 7.03), together with a written statement of such accountants (x) to the effect that, in making the examination necessary for their certification of such financial statements, they have not obtained any knowledge of the existence of an Event of Default or a Default under Section 7.03 and (y) if such accountants shall have obtained any knowledge of the existence of an Event of Default or such Default, describing the nature thereof; *provided*, that such independent certified public accountant report and opinion shall not be required to cover the comparative financial reporting set forth in clause (B) above;

(iv) simultaneously with the delivery of the financial statements of the Lead Borrower and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), a Compliance Certificate:

(A) stating that such Authorized Officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of the Lead Borrower and its Subsidiaries during the period covered by such financial statements with a view to determining whether the Lead Borrower and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such Authorized Officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which the Lead Borrower and its Subsidiaries propose to take or have taken with respect thereto,

(B) in the case of the delivery of the financial statements of the Lead Borrower and its Subsidiaries required by clause (i) of this Section 7.01(a), (1) attaching a schedule showing the calculation of the financial covenants specified in Section 7.03 and (2) attaching a certification that the representations and warranties in Section 6.01(bb) are true and correct in material respects as of the date of the balance sheet included in such financial statements,

(C) in the case of the delivery of the financial statements of the Lead Borrower and its Subsidiaries required by clauses (ii) and (iii) of this Section 7.01(a), including a discussion and analysis of the financial condition and results of operations of the Lead Borrower and its Subsidiaries for the portion of the Fiscal Year then elapsed and discussing the reasons for any significant variations from the Projections for such period and the figures for the corresponding period in the previous Fiscal Year, and

(D) in the case of the delivery of the financial statements of the Lead Borrower and its Subsidiaries required by clause (iii) of this Section 7.01(a), attaching (1) a summary of all material insurance coverage maintained as of the date thereof by any Loan Party or any of its Subsidiaries and evidence that such insurance coverage meets the requirements set forth in Section 7.01, each Security Agreement and each Mortgage, together with such other related documents and information as the Administrative Agent may reasonably require, (2) the calculation of the Excess Cash Flow in accordance with the terms of Section 2.05(c)(i) and (3) confirmation that there have been no changes to the information contained in each of the Perfection Certificates delivered on the Effective Date, the Closing Date or the date of the most recently updated Perfection Certificate delivered pursuant to this clause (iv) and/or attaching an updated Perfection Certificate identifying any such changes to the information contained therein;

(v) as soon as available and in any event within 10 days after the end of each fiscal month of the Lead Borrower and its Subsidiaries commencing with the first fiscal month of the Lead Borrower and its Subsidiaries ending after the Effective Date, reports in form and detail satisfactory to the Agents and certified by an Authorized Officer of the Administrative Borrower as being accurate and complete (A) listing all Accounts of the Loan Parties as of such day, which shall include the amount and age of each such Account, showing separately those which are more than 30, 60, 90 and 120 days old and a description of all Liens, set-offs, defenses and counterclaims with respect thereto, together with a reconciliation of such schedule with the schedule delivered to the Agents pursuant to this clause (v)(A) for the immediately preceding fiscal month, the name and mailing address of each Account Debtor with respect to each such Account and such other information as any Agent may request and (B) listing all accounts payable of the Loan Parties as of each such day which shall include the amount and age of each such account payable, the name and mailing address of each account creditor and such other information as any Agent may request;

(vi) [reserved];

(vii) as soon as available and in any event not later than the last day of each Fiscal Year (or in the case of the Fiscal Year ending December 31, 2023, not later than January 31, 2024), a certificate of an Authorized Officer of the Lead Borrower (A) attaching three statement Projections for the Lead Borrower and its Subsidiaries, supplementing and superseding the Projections previously required to be delivered pursuant to this Agreement, prepared on a monthly basis and otherwise in form and substance satisfactory to the Agents, for the immediately succeeding Fiscal Year for the Lead Borrower and its Subsidiaries and (B) certifying that the Projections have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that: (a) no forecasts are to be viewed as facts, (b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties, (c) no assurance can be given that any particular forecasts will be realized and (d) actual results may differ and such differences may be material.

(viii) promptly after submission to any Governmental Authority, all documents and information furnished to such Governmental Authority in connection with any investigation of any Loan Party other than routine inquiries by such Governmental Authority;

(ix) as soon as possible, and in any event within 3 days after the occurrence of an Event of Default or Default or the occurrence of any event or development that could reasonably be expected to have a Material Adverse Effect, the written statement of an Authorized Officer of the Lead Borrower setting forth the details of such Event of Default or Default or other event or development having a Material Adverse Effect and the action which the affected Loan Party proposes to take with respect thereto;

(x) as soon as possible and in any event: (A) within 10 days after the occurrence of any ERISA Event, notice of such ERISA Event (in reasonable detail), (B) within 10 days after receipt thereof by any Loan Party or any of its ERISA Affiliates from the PBGC, copies of each notice received by any Loan Party or any of its ERISA Affiliates of the PBGC's intention to terminate any Pension Plan or to have a trustee appointed to administer any Pension Plan, (C) within 10 days after receipt thereof by any Loan Party or any of its ERISA Affiliates from a sponsor of a Multiemployer Plan or from the PBGC, a copy of each notice received by any Loan Party or any of its ERISA Affiliates concerning the imposition or amount of withdrawal liability under Section 4202 of ERISA or indicating that such Multiemployer Plan may enter reorganization status under Section 4241 of ERISA, and (D) within 10 days after any Loan Party sends notice of a plant closing or mass layoff (as defined in WARN) to employees, copies of each such notice sent by such Loan Party;

(xi) promptly after the commencement thereof but in any event not later than 5 days after service of process with respect thereto on, or the obtaining of knowledge thereof by, any Loan Party, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator which, if adversely determined, could reasonably be expected to have a Material Adverse Effect;

(xii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with any Material Contract or any Merger Document;

(xiii) as soon as possible and in any event within 5 days after execution, receipt or delivery thereof, copies of any material notices that any Loan Party executes or receives in connection with the sale or other Disposition of the Equity Interests of, or all or substantially all of the assets of, any Loan Party;

(xiv) as soon as possible and in any event within 5 days after the delivery thereof to the Lead Borrower's Board of Directors, copies of all reports or other information so delivered;

(xv) promptly after (A) the sending or filing thereof, copies of all statements, reports and other information any Loan Party sends to any holders of its Indebtedness or its securities or files with the SEC or any national (domestic or foreign) securities exchange and (B) the receipt thereof, a copy of any material notice received from any holder of its Indebtedness;

(xvi) promptly upon receipt thereof, copies of all financial reports (including, without limitation, management letters), if any, submitted to any Loan Party by its auditors in connection with any annual or interim audit of the books thereof;

(xvii) promptly upon request, any certification or other evidence requested from time to time by any Lender in its sole discretion, confirming the Borrowers' compliance with Section 7.02(r);

(xviii) [reserved];

(xix) simultaneously with the delivery of the financial statements of the Lead Borrower and its Subsidiaries required by clauses (i), (ii) and (iii) of this Section 7.01(a), if, as a result of any change in accounting principles and policies from those used in the preparation of the Financial Statements that is permitted by Section 7.02(q), the consolidated financial statements of the Lead Borrower and its Subsidiaries delivered pursuant to clauses (i), (ii) and (iii) of this Section 7.01(a) will differ from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then, together with the first delivery of such financial statements after such change, one or more statements of reconciliation for all such prior financial statements in form and substance satisfactory to the Agents;

(xx) as soon as available, and in any event within 5 Business Days after the end of each fiscal month of the Lead Borrower and its Subsidiaries, (i) a calculation of Qualified Cash and Liquidity of the Lead Borrower and its Subsidiaries during such month and (ii) a 13-week cash flow forecast, in each case, in form and substance reasonably acceptable to the Required Lenders.

(xxi) promptly upon request, such other information concerning the condition or operations, financial or otherwise, of any Loan Party (including, without limitation, any Environmental, Social, and Corporate Governance information) as any Agent may from time to time may reasonably request.

(b) Additional Guarantors and Collateral Security. Cause:

(i) each Subsidiary of any Loan Party not in existence on the Effective Date, to execute and deliver to the Collateral Agent promptly and in any event within 3 days after the formation, acquisition or change in status thereof, (A) a Joinder Agreement, pursuant to which such Subsidiary shall be made a party to this Agreement as a Guarantor, (B) a supplement to the Security Agreement, together with (1) certificates evidencing all of the Equity Interests of any Person owned by such Subsidiary required to be pledged under the terms of the Security Agreement, (2) undated stock powers for such Equity Interests executed in blank with signature guaranteed, and (3) such opinions of counsel as the Collateral Agent may reasonably request, (C) to the extent required under the terms of this Agreement, one or more Mortgages creating on the real property of such Subsidiary with a Current Value (as defined below) in excess of $1,000,000 a perfected, first priority Lien (in terms of priority, subject only to Permitted Specified Liens) on such real property and such other Real Property Deliverables as may be required by the Collateral Agent with respect to each such real property, and (D) such other agreements, instruments, approvals or other documents reasonably requested by the Collateral Agent in order to create, perfect, establish the first priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such Subsidiary shall become Collateral for the Obligations; and

(ii) each owner of the Equity Interests of any such Subsidiary to execute and deliver promptly and in any event within 3 days after the formation or acquisition of such Subsidiary a Pledge Amendment (as defined in the Security Agreement), together with (A) certificates evidencing all of the Equity Interests of such Subsidiary required to be pledged under the terms of the Security Agreement, (B) undated stock powers or other appropriate instruments of assignment for such Equity Interests executed in blank with signature guaranteed, (C) such opinions of counsel as the Collateral Agent may reasonably request and (D) such other agreements, instruments, approvals or other documents requested by the Collateral Agent.

Notwithstanding the foregoing, no Excluded Subsidiary shall be required to become a Guarantor hereunder (and, as such, shall not be required to deliver the documents required by clause (i) above); provided, however, that (I) if the Equity Interests of a Foreign Subsidiary that is an Excluded Subsidiary are owned by a Loan Party, such Loan Party shall deliver all such documents, instruments, agreements (including, without limitation, at the reasonable request of the Collateral Agent, a pledge agreement governed by the laws of the jurisdiction of the organization of such Excluded Subsidiary) and certificates described in clause (ii) above to the Collateral Agent, and take all commercially reasonable actions reasonably requested by the Collateral Agent or otherwise necessary to grant and to perfect a first-priority Lien (subject to Permitted Specified Liens) in favor of the Collateral Agent, for the benefit of the Agents and the Lenders, in 100% of the Equity Interests of such Foreign Subsidiary to be pledged to the Collateral Agent.

(c) Compliance with Laws; Payment of Taxes.

(i) Comply, and cause each of its Subsidiaries to comply with all Requirements of Law, judgments and awards (including any settlement of any claim that, if breached, could give rise to any of the foregoing), except to the extent the failure to so comply could not reasonably be expected to have a Material Adverse Effect.

(ii) Pay, and cause each of its Subsidiaries to pay, in full before delinquency or before the expiration of any extension period, all Taxes imposed upon any Loan Party or any of its Subsidiaries or any property of any Loan Party or any of its Subsidiaries, except (i) unpaid Taxes in an aggregate amount at any one time not in excess of $50,000, and (ii) Taxes contested in good faith by proper proceedings which stay the imposition of any Lien resulting from the non-payment thereof and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP.

(d) Preservation of Existence, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

(e) Keeping of Records and Books of Account. Keep, and cause each of its Subsidiaries to keep, adequate records and books of account, with complete entries made to permit the preparation of financial statements in accordance with GAAP.

(f) Inspection Rights. Permit, and cause each of its Subsidiaries to permit, the agents and representatives of any Agent at any time and from time to time during normal business hours, at the expense of the Borrower, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants or any of its other representatives; provided, however, such examinations, visits and inspections shall not occur more than one (1) time per fiscal year in the absence of an Event of Default. In furtherance of the foregoing, each Loan Party hereby authorizes its independent accountants, and the independent accountants of each of its Subsidiaries, to discuss the affairs, finances and accounts of such Person (independently or together with representatives of such Person) with the agents and representatives of any Agent in accordance with this Section 7.01(f).

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear and casualty excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder, except to the extent the failure to so maintain and preserve or so comply could not reasonably be expected to have a Material Adverse Effect.

(h) Maintenance of Insurance.

(i) Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, flood, rent, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any Requirement of Law, (iii) required by any Material Contract and (iv) in any event in amount, adequacy and scope reasonably satisfactory to the Collateral Agent. All policies covering the Collateral are to be made payable to the Collateral Agent for the benefit of the Agents and the Lenders, as their interests may appear, in case of loss, under a standard non contributory "lender" or "secured party" clause and are to contain such other provisions as the Collateral Agent may require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Collateral Agent and the policies are to be premium prepaid, with the loss payable and additional insured endorsement in favor of the Collateral Agent for the benefit of the Agents and the Lenders, as their respective interests may appear, and such other Persons as the Collateral Agent may designate from time to time, and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Collateral Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Collateral Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Collateral Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Collateral Agent shall have the sole right, in the name of the Lenders, any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

(ii) Within 30 days of the Closing Date the Lead Borrower shall deliver to the Agent, evidence of the insurance coverage required by Section 7.01(i) and the terms of each Security Agreement and such other insurance coverage with respect to the business and operations of the Loan Parties as the Collateral Agent may reasonably request, with such endorsements as to the named insureds or loss payees thereunder as the Collateral Agent may request and providing that such policy may be terminated or canceled (by the insurer or the insured thereunder) only upon 30 days' prior written notice to the Collateral Agent and each such named insured or loss payee, together with evidence of the payment of all premiums due in respect thereof for such period as the Collateral Agent may request.

(i) Obtaining of Permits, Etc. Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all permits, licenses, authorizations, approvals, entitlements and accreditations that are necessary or useful in the proper conduct of its business, in each case, except to the extent the failure to obtain, maintain, preserve or take such action could not reasonably be expected to have a Material Adverse Effect.

(j) Environmental.

(i) Keep the Collateral free of any Environmental Lien;

(ii) Obtain, maintain and preserve, and cause each of its Subsidiaries to obtain, maintain and preserve, and take all necessary action to timely renew, all Environmental Permits that are necessary or useful in the proper conduct of its business, and comply, and cause each of its Subsidiaries to comply, with all Environmental Laws and Environmental Permits except to the extent the failure to so obtain, maintain, preserve or comply could not reasonably be expected to have a Material Adverse Effect;

(iii) Take all commercially reasonable steps to prevent any Release or threatened Release of Hazardous Materials in violation of any Environmental Law or Environmental Permit at, in, on, under or from any property owned, leased or operated by any Loan Party or its Subsidiaries that could reasonably be expected to result in a Material Adverse Effect;

(iv) Provide the Collateral Agent with written notice within ten (10) days of any of the following: (A) discovery of any Release of a Hazardous Material or environmental condition at, in, on, under or from any property currently or formerly owned, leased or operated by any Loan Party, Subsidiary or predecessor in interest or any violation of Environmental Law or Environmental Permit that in any case could reasonably be expected to result in a Material Adverse Effect; (B) notice that an Environmental Lien has been filed against any Collateral; or (C) a Environmental Claim or Environmental Liabilities that could reasonably be expected to result in a Material Adverse Effect; and provide such reports, documents and information as the Collateral Agent may reasonably request from time to time with respect to any of the foregoing.

(k) Fiscal Year. Cause the Fiscal Year of the Lead Borrower and its Subsidiaries to end on December 31 of each calendar year unless the Agents consent to a change in such Fiscal Year (and appropriate related changes to this Agreement).

(l) Landlord Waivers; Collateral Access Agreements. At any time any Collateral with a book value in excess of $2,500,000 (when aggregated with all other Collateral at the same location) is located on any real property of a Loan Party (whether such real property is now existing or acquired after the Effective Date) which is not owned by a Loan Party, or is stored on the premises of a bailee, warehouseman, or similar party, obtain written subordinations or waivers or collateral access agreements, as the case may be, in form and substance satisfactory to the Collateral Agent.

(m) After Acquired Real Property. Upon the acquisition by it or any of its Subsidiaries after the date hereof of any interest in any real property (wherever located) (each such interest being a "New Facility") with a Current Value (as defined below) in excess of $1,000,000, immediately so notify the Collateral Agent, setting forth with specificity a description of the interest acquired, the location of the real property, any structures or improvements thereon and either an appraisal or such Loan Party's good-faith estimate of the current value of such real property (for purposes of this Section, the "Current Value"). The Collateral Agent shall notify such Loan Party whether it intends to require a Mortgage (and any other Real Property Deliverables) with respect to such New Facility. Upon receipt of such notice requesting a Mortgage (and any other Real Property Deliverables), the Person that has acquired such New Facility shall promptly furnish the same to the Collateral Agent. The Borrowers shall pay all fees and expenses, including, without limitation, reasonable attorneys' fees and expenses, and all title insurance charges and premiums, in connection with each Loan Party's obligations under this Section 7.01(m).

(n) Anti-Corruption Laws; Anti-Money Laundering Laws; Sanctions.

(i) Maintain, and cause each of its Subsidiaries to maintain, policies and procedures designed to promote compliance by each Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws and Anti-Money Laundering Laws.

(ii) Comply, and cause each of its Subsidiaries to comply, with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.

(iii) Neither Loan Party nor, to the best knowledge of any Loan Party, any director, officer, employee or any Person acting on behalf of any Loan Party will engage in any activity that would breach any Anti-Corruption Law.

(iv) Promptly notify the Administrative Agent of any action, suit or investigations by any court or Governmental Authority in relation to an alleged breach of the Anti-Corruption Law.

(v) Not directly or indirectly use, lend or contribute the proceeds of any Loan for any purpose that would breach any Anti-Corruption Law.

(vi) Each Loan Party and Affiliate, officer, employee or director, acting on behalf of the Loan Party is (and will take no action which would result in any such Person not being) in compliance with (A) all applicable OFAC rules and regulations, (B) all applicable United States of America, United Kingdom, United Nations, European Union, German, Canadian, Australian and all other reasonable internationally respected national autonomous sanctions, embargos and trade restrictions and (C) all applicable provisions of the USA Patriot Act. In addition, none of the activities or business of any Loan Party includes any kind of activities or business of or with any Person or in any country or territory that is subject to any Sanctions.

(vii) In order to comply with the "know your customer/borrower" requirements of the Anti-Money Laundering Laws, promptly provide to the Administrative Agent upon its reasonable request from time to time (A) information relating to individuals and entities affiliated with any Loan Party that maintain a business relationship with the Administrative Agent, and (B) such identifying information and documentation as may be available for such Loan Party in order to enable the Administrative Agent or any Lender to comply with Anti-Money Laundering Laws.

(o) Lender Meetings. Upon the request of any Agent or the Required Lenders (which request, so long as no Event of Default shall have occurred and be continuing, shall not be made more than once during each fiscal quarter), participate in a meeting with the Agents and the Lenders at the Lead Borrower's corporate offices (or at such other location as may be agreed to by the Lead Borrower and such Agent or the Required Lenders) or by video conference at such time as may be agreed to by the Lead Borrower and such Agent or the Required Lenders.

(p) Board Observation Rights. The Administrative Agent shall be entitled to designate one observer (the "Board Observer") to attend any regular meeting (a "BOD Meeting") of the Board of Directors of the Lead Borrower or any of its Subsidiaries (or, in each case, any relevant committees thereof), except that the Board Observer shall not be entitled to vote on matters presented to or discussed by the Board of Directors (or any relevant committee thereof) of the Lead Borrower or any of its Subsidiaries at any such meetings. The Board Observer shall be timely notified of the time and place of any BOD Meetings (which shall be held no less than once per quarter) and will be given written notice of all proposed actions to be taken by the Board of Directors (or any relevant committee thereof) of the Lead Borrower and any of its Subsidiaries at such meeting as if the Board Observer were a member thereof. Such notice shall describe in reasonable detail the nature and substance of the matters to be discussed and/or voted upon at such meeting (or the proposed actions to be taken by written consent without a meeting). The Board Observer shall have the right to receive all information provided to the members of the Board of Directors or any similar group performing an executive oversight or similar function (or any relevant committee thereof) of the Lead Borrower and any of its Subsidiaries in anticipation of or at such meeting (regular or special and whether telephonic or otherwise). The Board Observer shall keep such materials and information confidential in accordance with Section 12.19 of this Agreement. The Borrowers shall reimburse the Board Observer for all reasonable out-of-pocket costs and expenses incurred in connection with its participation in any such BOD Meeting. Notwithstanding the foregoing, the Board Observer shall not be entitled to receive portions of any materials relating to, or be in attendance for any portion of any BOD Meetings relating to topics which (i) are subject to attorney-client privilege, or (ii) present a conflict of interest for the Board Observer; provided, however, that the Lead Borrower shall be required to provide the Board Observer with written notice that the Lead Borrower is electing to withhold portions of materials from the Board Observer or to exclude the Board Observer from portions of BOD Meetings as permitted by this sentence.

(q) Post-Closing Covenants.

(i) Within three Business Days of the Closing Date the Lead Borrower shall deliver the Agent an original stock certificate of Healthy Offers and a stock power reasonably acceptable to the Agent.

(r) Further Assurances. Take such action and execute, acknowledge and deliver, and cause each of its Subsidiaries to take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as any Agent may require from time to time in order (i) to carry out more effectively the purposes of this Agreement and the other Loan Documents, (ii) to subject to valid and perfected first priority Liens any of the Collateral or any other property of any Loan Party and its Subsidiaries, (iii) to establish and maintain the validity and effectiveness of any of the Loan Documents and the validity, perfection and priority of the Liens intended to be created thereby, and (iv) to better assure, convey, grant, assign, transfer and confirm unto each Secured Party the rights now or hereafter intended to be granted to it under this Agreement or any other Loan Document. In furtherance of the foregoing, to the maximum extent permitted by applicable law, each Loan Party (i) authorizes each Agent to execute any such agreements, instruments or other documents in such Loan Party's name and to file such agreements, instruments or other documents in any appropriate filing office, (ii) authorizes each Agent to file any financing statement required hereunder or under any other Loan Document, and any continuation statement or amendment with respect thereto, in any appropriate filing office without the signature of such Loan Party, and (iii) ratifies the filing of any financing statement, and any continuation statement or amendment with respect thereto, filed without the signature of such Loan Party prior to the date hereof.

Section 7.02 Negative Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Liens, Etc. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien upon or with respect to any of its properties, whether now owned or hereafter acquired; file or suffer to exist under the Uniform Commercial Code or any Requirement of Law of any jurisdiction, a financing statement (or the equivalent thereof) that names it or any of its Subsidiaries as debtor; sign or suffer to exist any security agreement authorizing any secured party thereunder to file such financing statement (or the equivalent thereof) other than, as to all of the above, Permitted Liens.

(b) Indebtedness. Create, incur, assume, guarantee or suffer to exist, or otherwise become or remain liable with respect to, or permit any of its Subsidiaries to create, incur, assume, guarantee or suffer to exist or otherwise become or remain liable with respect to, any Indebtedness other than Permitted Indebtedness.

(c) Fundamental Changes; Dispositions.

(i) Wind-up, liquidate or dissolve, or merge, consolidate or amalgamate with any Person, including by means of a "plan of division" under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, or permit any of its Subsidiaries to do (or agree to do) any of the foregoing; provided, however, that any wholly-owned Subsidiary of any Loan Party (other than a Borrower) may be merged into such Loan Party or another wholly-owned Subsidiary of such Loan Party, or may consolidate or amalgamate with another wholly-owned Subsidiary of such Loan Party, so long as (A) no other provision of this Agreement would be violated thereby, (B) such Loan Party gives the Agents at least 30 days' prior written notice of such merger, consolidation or amalgamation accompanied by true, correct and complete copies of all material agreements, documents and instruments relating to such merger, consolidation or amalgamation, including, without limitation, the certificate or certificates of merger or amalgamation to be filed with each appropriate Secretary of State (with a copy as filed promptly after such filing), (C) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such transaction, (D) the Lenders' rights in any Collateral, including, without limitation, the existence, perfection and priority of any Lien thereon, are not adversely affected by such merger, consolidation or amalgamation and (E) the surviving Subsidiary, if any, if not already a Loan Party, is joined as a Loan Party hereunder pursuant to a Joinder Agreement and is a party to a Security Agreement and the Equity Interests of such Subsidiary is the subject of a Security Agreement, in each case, which is in full force and effect on the date of and immediately after giving effect to such merger, consolidation or amalgamation; and

(ii) Make any Disposition, whether in one transaction or a series of related transactions, of all or any part of its business, property or assets, whether now owned or hereafter acquired (or agree to do any of the foregoing), or permit any of its Subsidiaries to do any of the foregoing; provided, however, that any Loan Party and its Subsidiaries may make Permitted Dispositions.

(d) Change in Nature of Business. Make, or permit any of its Subsidiaries to make, any change in the nature of its business as described in Section 6.01(l).

(e) Loans, Advances, Investments, Etc. Make or commit or agree to make, or permit any of its Subsidiaries make or commit or agree to make, any Investment in any other Person except for Permitted Investments.

(f) Sale and Leaseback Transactions. Enter into, or permit any of its Subsidiaries to enter into, any Sale and Leaseback Transaction.

(g) [Reserved].

(h) Restricted Payments. Make or permit any of its Subsidiaries to make any Restricted Payment other than Permitted Restricted Payments.

(i) Federal Reserve Regulations. Permit any Loan or the proceeds of any Loan under this Agreement to be used for any purpose that would cause such Loan to be a margin loan under the provisions of Regulation T, U or X of the Board.

(j) Transactions with Affiliates. Enter into, renew, extend or be a party to, or permit any of its Subsidiaries to enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any Affiliate, except (i) transactions consummated in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an Affiliate thereof, if they involve one or more payments by the Lead Borrower or any of its Subsidiaries in excess of $100,000 for any single transaction or series of related transactions, that are fully disclosed to the Agents prior to the consummation thereof, (ii) transactions with another Loan Party, (iii) transactions permitted by Section 7.02(e) and Section 7.02(h), (iv) sales of Qualified Equity Interests of the Lead Borrower to Affiliates of the Lead Borrower not otherwise prohibited by the Loan Documents and the granting of registration and other customary rights in connection therewith, and (v) reasonable and customary director and officer compensation (including bonuses and stock option programs), benefits and indemnification arrangements, in each case approved by the Board of Directors (or a committee thereof) of such Loan Party or such Subsidiary.

(k) Limitations on Dividends and Other Payment Restrictions Affecting Subsidiaries. Create or otherwise cause, incur, assume, suffer or permit to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary of any Loan Party (i) to pay dividends or to make any other distribution on any shares of Equity Interests of such Subsidiary owned by any Loan Party or any of its Subsidiaries, (ii) to pay or prepay or to subordinate any Indebtedness owed to any Loan Party or any of its Subsidiaries, (iii) to make loans or advances to any Loan Party or any of its Subsidiaries or (iv) to transfer any of its property or assets to any Loan Party or any of its Subsidiaries, or permit any of its Subsidiaries to do any of the foregoing; provided, however, that nothing in any of clauses (i) through (iv) of this Section 7.02(k) shall prohibit or restrict compliance with:

(A) this Agreement and the other Loan Documents;

(B) any agreement in effect on the date of this Agreement and described on Schedule 7.02(k), or any extension, replacement or continuation of any such agreement; provided, that, any such encumbrance or restriction contained in such extended, replaced or continued agreement is no less favorable to the Agents and the Lenders than the encumbrance or restriction under or pursuant to the agreement so extended, replaced or continued;

(C) any applicable law, rule or regulation (including, without limitation, applicable currency control laws and applicable state corporate statutes restricting the payment of dividends in certain circumstances);

(D) in the case of clause (iv), (1) customary restrictions on the subletting, assignment or transfer of any specified property or asset set forth in a lease, license, asset sale agreement or similar contract for the conveyance of such property or asset and (2) instrument or other document evidencing a Permitted Lien (or the Indebtedness secured thereby) from restricting on customary terms the transfer of any property or assets subject thereto;

(E) customary restrictions on dispositions of real property interests in reciprocal easement agreements;

(F) customary restrictions in agreements for the sale of assets on the transfer or encumbrance of such assets during an interim period prior to the closing of the sale of such assets; or

(G) customary restrictions in contracts that prohibit the assignment of such contract.

(l) Limitations on Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any of its property or revenues, whether now owned or hereafter acquired, or that requires the grant of any security for an obligation if security is granted for another obligation, except the following: (i) this Agreement and the other Loan Documents, (ii) restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by Section 7.02(b) of this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (iv) customary provisions in leases restricting the assignment or sublet thereof.

(m) Organizational Documents and Certain Other Agreements; Etc.

(i) amend, modify or otherwise change any of its Governing Documents (including, without limitation, by the filing or modification of any certificate of designation, or any agreement or arrangement entered into by it) with respect to any of its Equity Interests (including any shareholders' agreement), or enter into any new agreement with respect to any of its Equity Interests, except any such amendments, modifications or changes or any such new agreements or arrangements pursuant to this clause (i) that either individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect, provided that no such amendment, modification or change or new agreement or arrangement shall provide for any plan of division pursuant to Section 18-217 of the Delaware Limited Liability Company Act (or any similar statute or provision under applicable law); or

(ii) agree to any amendment, modification or other change to or waiver of any of its rights under any Material Contract or any Merger Document if such amendment, modification, change or waiver would be adverse to any Loan Party or any of its Subsidiaries or the Agents and the Lenders.

(n) Investment Company Act of 1940. Engage in any business, enter into any transaction, use any securities or take any other action or permit any of its Subsidiaries to do any of the foregoing, that would cause it or any of its Subsidiaries to become subject to the registration requirements of the Investment Company Act of 1940, as amended, by virtue of being an "investment company" or a company "controlled" by an "investment company" not entitled to an exemption within the meaning of such Act.

(o) ERISA. Cause or fail to prevent, or permit any of its ERISA Affiliates to cause or fail to prevent, an ERISA Event that would reasonably be expected to result in a Material Adverse Effect.

(p) Environmental. Permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials on, in, at, under or from any property owned, leased or operated by it or any of its Subsidiaries, except in compliance with Environmental Laws (other than any noncompliance that could not reasonably be expected to have a Material Adverse Effect).

(q) Accounting Methods. Modify or change, or permit any of its Subsidiaries to modify or change, its method of accounting or accounting principles from those utilized in the preparation of the Financial Statements (other than as may be required to conform to GAAP).

(r) Sanctioned Persons; Anti-Corruption Laws; Anti-Money Laundering Laws.

(i) Conduct, nor permit any of its Subsidiaries to conduct, any business or engage in any transaction or deal with or for the benefit of any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to, from or for the benefit of any Sanctioned Person; or

(ii) Use, nor permit any of its Subsidiaries to use, directly or indirectly, any of the proceeds of any Loan, (A) to fund any activities or business of or with any Sanctioned Person or in any other manner that would result in a violation of any Sanctions by any Person, or (B) for the purpose of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Law.

(s) No Excess Cash. Permit any Excluded Subsidiary to maintain, an average monthly balance of cash and Cash Equivalents in all of the checking, savings and other accounts of the Excluded Subsidiaries (taken as a whole) in excess of $100,000 at any time.

Section 7.03 Financial Covenants. So long as any principal of or interest on any Loan or any other Obligation (whether or not due) shall remain unpaid (other than Contingent Indemnity Obligations) or any Lender shall have any Commitment hereunder, each Loan Party shall not, unless the Required Lenders shall otherwise consent in writing:

(a) Leverage Ratio. Allow the Leverage Ratio of the Lead Borrower and its Subsidiaries for any Test Period below to be greater than the ratio set forth opposite such date:

Fiscal Quarter End	Leverage Ratio
March 31, 2024	4.50:1.00
June 30, 2024	4.00:1.00
September 30, 2024	3.50:1.00
December 31, 2024	3.00:1.00
March 31, 2025	2.50:1.00
June 30, 2025	2.25:1.00
September 30, 2025 and thereafter	2.00:1.00

For the avoidance of doubt, the Leverage Ratio shall not be tested for the Fiscal Quarter ended December 31, 2023.

(b) Liquidity. Allow Liquidity of the Loan Parties to be less than $5,000,000 at any time.

ARTICLE VIII

CASH MANAGEMENT ARRANGEMENTS AND OTHER COLLATERAL MATTERS

Section 8.01 Cash Management Arrangements.

(a) The Loan Parties shall (i) establish and maintain cash management services of a type and on terms reasonably satisfactory to the Agents and (ii) except as otherwise provided under Section 8.01(b), deposit or cause to be deposited promptly, and in any event no later than the next Business Day after the date of receipt thereof, all proceeds in respect of any Collateral, all Collections (of a nature susceptible to a deposit in a bank account) and all other amounts received by any Loan Party (including payments made by Account Debtors directly to any Loan Party) into a Cash Management Account.

(b) Within 30 days after the Effective Date (or such later date as agreed to by the Administrative Agent in its sole discretion), the Loan Parties shall, with respect to each Cash Management Account deliver to the Collateral Agent a Control Agreement with respect to such Cash Management Account. From and after the date that is 30 days following the Effective Date (or such later date as agreed to by the Administrative Agent in its sole discretion), the Loan Parties shall not maintain, and shall not permit any of their Subsidiaries to maintain, cash, Cash Equivalents or other amounts in any deposit account or securities account, unless such account is a Cash Management Account subject to a Control Agreement or such account is an Excluded Account and such cash and Cash Equivalents are permitted to be held in such Excluded Account pursuant to the definition thereof.

(c) So long as no Default or Event of Default has occurred and is continuing, the Lead Borrower may amend Schedule 8.01 to add or replace a Cash Management Account; provided, however, that (i) the depository institution for such prospective Cash Management Account shall be reasonably satisfactory to the Collateral Agent and the Collateral Agent shall have consented in writing in advance to the opening of such Cash Management Account with the prospective depository institution, and (ii) prior to the time of the opening of such Cash Management Account, each Loan Party and such prospective depository institution shall have executed and delivered to the Collateral Agent a Control Agreement. Each Loan Party shall close any of its Cash Management Accounts (and establish replacement cash management accounts in accordance with the foregoing sentence) promptly and in any event within 30 days of notice from the Collateral Agent that the creditworthiness of any depository bank is no longer acceptable in the Collateral Agent's reasonable judgment, or that the operating performance, funds transfer, or availability procedures or performance of such depository bank with respect to Cash Management Accounts or the Collateral Agent's liability under any Control Agreement with such depository institution is no longer acceptable in the Collateral Agent's reasonable judgment.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01 Events of Default. Each of the following events shall constitute an event of default (each, an "Event of Default"):

(a) any Borrower shall fail to pay, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), (i) any interest on any Loan, any Collateral Agent Advance or any fee, indemnity or other amount payable under this Agreement (other than any portion thereof constituting principal of the Loans) or any other Loan Document, and such failure continues for a period of two (2) Business Days or (ii) all or any portion of the principal of the Loans;

(b) any representation or warranty made or deemed made by or on behalf of any Loan Party or by any officer of the foregoing under or in connection with any Loan Document or under or in connection with any certificate or other writing delivered to any Secured Party pursuant to any Loan Document shall have been incorrect in any material respect (or in any respect if such representation or warranty is qualified or modified as to materiality or "Material Adverse Effect" in the text thereof) when made or deemed made;

(c) any Loan Party shall fail to perform or comply with any covenant or agreement contained in Section 7.01(a), Section 7.01(c), Section 7.01(d), Section 7.01(f), Section 7.01(h), Section 7.01(k), Section 7.01(m), Section 7.01(o), Section 7.02 or Section 7.03 or Article VIII, or any Loan Party shall fail to perform or comply with any covenant or agreement contained in any Security Agreement to which it is a party or any Mortgage to which it is a party;

(d) any Loan Party shall fail to perform or comply with any other term, covenant or agreement contained in any Loan Document to be performed or observed by it and, except as set forth in subsections (a), (b) and (c) of this Section 9.01, such failure, if capable of being remedied, shall remain unremedied for 15 days after the earlier of the date a senior officer of any Loan Party has knowledge of such failure and the date written notice of such default shall have been given by any Agent to such Loan Party;

(e) any Loan Party or any of its Subsidiaries shall fail to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) any principal, interest or other amount payable in respect of Indebtedness (excluding Indebtedness evidenced by this Agreement) having an aggregate amount outstanding in excess of $1,000,000, and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Indebtedness, or any other default under any agreement or instrument relating to any such Indebtedness, or any other event, shall occur and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or any such Indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), redeemed, purchased or defeased or an offer to prepay, redeem, purchase or defease such Indebtedness shall be required to be made, in each case, prior to the stated maturity thereof;

(f) any Loan Party or any of its Subsidiaries (i) shall institute any proceeding or voluntary case seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, (ii) shall be generally not paying its debts as such debts become due or shall admit in writing its inability to pay its debts generally, (iii) shall make a general assignment for the benefit of creditors, or (iv) shall take any action to authorize or effect any of the actions set forth above in this subsection (f);

(g) any proceeding shall be instituted against any Loan Party or any of its Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, liquidation, winding up, reorganization, arrangement, adjustment, protection, relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for any such Person or for any substantial part of its property, and either such proceeding shall remain undismissed or unstayed for a period of 60 days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against any such Person or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property) shall occur;

(h) any material provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against any Loan Party intended to be a party thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by any Loan Party, any of its Subsidiaries any of its Subsidiaries or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or any Loan Party shall deny in writing that it has any liability or obligation purported to be created under any Loan Document;

(i) any Security Agreement, any Mortgage or any other security document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Collateral Agent for the benefit of the Agents and the Lenders on any Collateral purported to be covered thereby;

(j) one or more judgments, orders or awards (or any settlement of any litigation or other proceeding that, if breached, could result in a judgment, order or award) for the payment of money exceeding $1,000,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has been notified and has not denied coverage) shall be rendered against any Loan Party or any of its Subsidiaries and remain unsatisfied and (i) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, award or settlement or (ii) there shall be a period of 10 consecutive days after entry thereof during which (A) a stay of enforcement thereof is not be in effect or (B) the same is not vacated, discharged, stayed or bonded pending appeal;

(k) any Loan Party or any of its Subsidiaries is enjoined, restrained or in any way prevented by the order of any court or any Governmental Authority from conducting, or otherwise ceases to conduct for any reason whatsoever, all or any material part of its business for more than 15 days;

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

(m) the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party or any of its Subsidiaries, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect;

(n) the indictment, or the threatened indictment of any Loan Party, any of its Subsidiaries or any senior officer thereof under any criminal statute, or commencement or threatened commencement of criminal or civil proceedings against any Loan Party or any senior officer thereof, pursuant to which statute or proceedings the penalties or remedies sought or available include forfeiture to any Governmental Authority of any material portion of the property of such Person;

(o) [reserved];

(p) (i) there shall occur and be continuing any "Event of Default" (or any comparable term) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (ii) any of the Obligations for any reason shall cease to be "Senior Indebtedness" or "Designated Senior Indebtedness" (or any comparable terms) under, and as defined in the documents evidencing or governing any Subordinated Indebtedness, (iii) any Indebtedness other than the Obligations shall constitute "Designated Senior Indebtedness" (or any comparable term) under, and as defined in, the documents evidencing or governing any Subordinated Indebtedness, (iv) any holder of Subordinated Indebtedness shall fail to perform or comply with any of the subordination provisions of the documents evidencing or governing such Subordinated Indebtedness, or (v) the subordination provisions of the documents evidencing or governing any Subordinated Indebtedness shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Subordinated Indebtedness;

(q) [reserved];

(r) a Change of Control shall have occurred; or

(s) [reserved];

then, and in any such event, the Collateral Agent may, and shall at the request of the Required Lenders, by notice to the Borrower, (i) terminate or reduce all Commitments, whereupon all Commitments shall immediately be so terminated or reduced, (ii) declare all or any portion of the Loans then outstanding to be accelerated and due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, together with the payment of the Applicable Premium with respect to the Commitments so terminated and the Loans so repaid, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Loan Party and (iii) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents; provided, however, that upon the occurrence of any Event of Default described in subsection (f) or (g) of this Section 9.01 with respect to any Loan Party, without any notice to any Loan Party or any other Person or any act by any Agent or any Lender, all Commitments shall automatically terminate and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under this Agreement and the other Loan Documents, including, without limitation, the Applicable Premium, shall be accelerated and become due and payable automatically and immediately, without presentment, demand, protest or notice of any kind, all of which are expressly waived by each Loan Party.

ARTICLE X

AGENTS

Section 10.01 Appointment. Each Lender (and each subsequent maker of any Loan by its making thereof) hereby irrevocably appoints, authorizes and empowers the Administrative Agent and the Collateral Agent to perform the duties of each such Agent as set forth in this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto, including: (i) to receive on behalf of each Lender any payment of principal of or interest on the Loans outstanding hereunder and all other amounts accrued hereunder for the account of the Lenders and paid to such Agent, and, subject to Section 2.02 of this Agreement, to distribute promptly to each Lender its Pro Rata Share of all payments so received; (ii) to distribute to each Lender copies of all material notices and agreements received by such Agent and not required to be delivered to each Lender pursuant to the terms of this Agreement, provided that the Agents shall not have any liability to the Lenders for any Agent's inadvertent failure to distribute any such notices or agreements to the Lenders; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Agreement or any other Loan Document; (v) to make the Loans and Collateral Agent Advances, for such Agent or on behalf of the applicable Lenders as provided in this Agreement or any other Loan Document; (vi) to perform, exercise, and enforce any and all other rights and remedies of the Lenders with respect to the Loan Parties, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by such Agent of the rights and remedies specifically authorized to be exercised by such Agent by the terms of this Agreement or any other Loan Document; (vii) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Agreement or any other Loan Document; (viii) subject to Section 10.03, to take such action as such Agent deems appropriate on its behalf to administer the Loans and the Loan Documents and to exercise such other powers delegated to such Agent by the terms hereof or the other Loan Documents (including, without limitation, the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations); and (ix) to act with respect to all Collateral under the Loan Documents, including for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations. As to any matters not expressly provided for by this Agreement and the other Loan Documents (including, without limitation, enforcement or collection of the Loans), the Agents shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), and such instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) shall be binding upon all Lenders and all makers of Loans; provided, however, the Agents shall not be required to take any action which, in the reasonable opinion of any Agent, exposes such Agent to liability or which is contrary to this Agreement or any other Loan Document or applicable law.

Section 10.02 Nature of Duties; Delegation. ii) The Agents shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Loan Documents. The duties of the Agents shall be mechanical and administrative in nature. The Agents shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any other Loan Document, express or implied, is intended to or shall be construed to impose upon the Agents any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein. Each Lender shall make its own independent investigation of the financial condition and affairs of the Loan Parties in connection with the making and the continuance of the Loans hereunder and shall make its own appraisal of the creditworthiness of the Loan Parties and the value of the Collateral without reliance upon the Administrative Agent or any other Lender or any of their Related Parties, and neither the Agents nor any of their Related Parties shall have any duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into their possession before the initial Loan hereunder or at any time or times thereafter, provided that, upon the reasonable request of a Lender, each Agent shall provide to such Lender any documents or reports delivered to such Agent by the Loan Parties pursuant to the terms of this Agreement or any other Loan Document. If any Agent seeks the consent or approval of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) to the taking or refraining from taking any action hereunder, such Agent shall send notice thereof to each Lender. Each Agent shall promptly notify each Lender any time that the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents) have instructed such Agent to act or refrain from acting pursuant hereto.

(a) Each Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any of its Related Parties or any other trustee, co-agent or other Person (including any Lender). Any such Related Party, trustee, co-agent or other Person shall benefit from this Article X to the extent provided by the applicable Agent.

Section 10.03 Rights, Exculpation, Etc. The Agents and their Related Parties shall not be liable for any action taken or omitted to be taken by them under or in connection with this Agreement or the other Loan Documents, except for their own gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction. Without limiting the generality of the foregoing, the Agents (i) may treat the payee of any Loan as the owner thereof until the Collateral Agent receives written notice of the assignment or transfer thereof, pursuant to Section 12.07 hereof, signed by such payee and in form satisfactory to the Collateral Agent; (ii) may consult with legal counsel (including, without limitation, counsel to any Agent or counsel to the Loan Parties), independent public accountants, and other experts selected by any of them and shall not be liable for any action taken or omitted to be taken in good faith by any of them in accordance with the advice of such counsel or experts; (iii) make no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, certificates, warranties or representations made in or in connection with this Agreement or the other Loan Documents; (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Person, the existence or possible existence of any Default or Event of Default, or to inspect the Collateral or other property (including, without limitation, the books and records) of any Person; (v) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto; and (vi) shall not be deemed to have made any representation or warranty regarding the existence, value or collectibility of the Collateral, the existence, priority or perfection of the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agents be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral. The Agents shall not be liable for any apportionment or distribution of payments made in good faith pursuant to Section 4.03, and if any such apportionment or distribution is subsequently determined to have been made in error, and the sole recourse of any Lender to whom payment was due but not made shall be to recover from other Lenders any payment in excess of the amount which they are determined to be entitled. The Agents may at any time request instructions from the Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Loan Documents the Agents are permitted or required to take or to grant, and if such instructions are promptly requested, the Agents shall be absolutely entitled to refrain from taking any action or to withhold any approval under any of the Loan Documents until they shall have received such instructions from the Required Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents).

Section 10.04 Reliance. Each Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Loan Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

Section 10.05 Indemnification. To the extent that any Agent or any Related Party of the foregoing is not reimbursed and indemnified by any Loan Party, and whether or not such Agent has made demand on any Loan Party for the same, the Lenders will, within five days of written demand by such Agent, reimburse such Agent and such Related Parties for and indemnify such Agent and such Related Parties from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, client charges and expenses of counsel or any other advisor to such Agent and such Related Parties), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against such Agent and the Related Parties in any way relating to or arising out of this Agreement or any of the other Loan Documents or any action taken or omitted by such Agent and such Related Parties under this Agreement or any of the other Loan Documents, in proportion to each Lender's Pro Rata Share, including, without limitation, advances and disbursements made pursuant to Section 10.08; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements for which there has been a final non-appealable judicial determination that such liability resulted from such Agent's or such Related Party's gross negligence or willful misconduct. The obligations of the Lenders under this Section 10.05 shall survive the payment in full of the Loans and the termination of this Agreement.

Section 10.06 Agents Individually. With respect to its Pro Rata Share of the Total Term Loan Commitment hereunder and the Loans made by it, each Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or maker of a Loan. The terms "Lenders" or "Required Lenders" or any similar terms shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity as a Lender or one of the Required Lenders. Each Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, trust or other business with any Borrower as if it were not acting as an Agent pursuant hereto without any duty to account to the other Lenders.

Section 10.07 Successor Agent.

(a) Any Agent may at any time give at least 30 days prior written notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Agent. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article, Section 12.04 and Section 12.15 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

Section 10.08 Collateral Matters.

(a) The Collateral Agent may from time to time make such disbursements and advances ("Collateral Agent Advances") which the Collateral Agent, in its sole discretion, deems necessary or desirable to preserve, protect, prepare for sale or lease or dispose of the Collateral or any portion thereof, to enhance the likelihood or maximize the amount of repayment by the Borrowers of the Loans and other Obligations or to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including, without limitation, costs, fees and expenses as described in Section 12.04. The Collateral Agent Advances shall be repayable on demand and be secured by the Collateral and shall bear interest at a rate per annum equal to the rate then applicable to Reference Rate Loans. The Collateral Agent Advances shall constitute Obligations hereunder which may be charged to the Loan Account in accordance with Section 4.01. The Collateral Agent shall notify each Lender and the Lead Borrower in writing of each such Collateral Agent Advance, which notice shall include a description of the purpose of such Collateral Agent Advance. Without limitation to its obligations pursuant to Section 10.05, each Lender agrees that it shall make available to the Collateral Agent, upon the Collateral Agent's demand, in Dollars in immediately available funds, the amount equal to such Lender's Pro Rata Share of each such Collateral Agent Advance. If such funds are not made available to the Collateral Agent by such Lender, the Collateral Agent shall be entitled to recover such funds on demand from such Lender, together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Collateral Agent, at the Federal Funds Rate for three Business Days and thereafter at the Reference Rate.

(b) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its discretion, to release any Lien granted to or held by the Collateral Agent upon any Collateral upon termination of the Total Term Loan Commitment and payment and satisfaction of all Loans and all other Obligations (other than Contingent Indemnity Obligations) in accordance with the terms hereof; or constituting property being sold or disposed of in the ordinary course of any Loan Party's business or otherwise in compliance with the terms of this Agreement and the other Loan Documents; or constituting property in which the Loan Parties owned no interest at the time the Lien was granted or at any time thereafter; or if approved, authorized or ratified in writing by the Lenders in accordance with Section 12.02. Upon request by the Collateral Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 10.08(b).

(c) Without in any manner limiting the Collateral Agent's authority to act without any specific or further authorization or consent by the Lenders (as set forth in Section 10.08(b)), each Lender agrees to confirm in writing, upon request by the Collateral Agent, the authority to release Collateral conferred upon the Collateral Agent under Section 10.08(b). Upon receipt by the Collateral Agent of confirmation from the Lenders of its authority to release any particular item or types of Collateral, and upon prior written request by any Loan Party, the Collateral Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the Agents and the Lenders upon such Collateral; provided, however, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligations or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Lien upon (or obligations of any Loan Party in respect of) all interests in the Collateral retained by any Loan Party.

(d) Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, each Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral under any Loan Document or to enforce any Guaranty, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Collateral Agent for the benefit of the Lenders in accordance with the terms thereof, (ii) in the event of a foreclosure by the Collateral Agent on any of the Collateral pursuant to a public or private sale, the Administrative Agent, the Collateral Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and (iii) the Collateral Agent, as agent for and representative of the Agents and the Lenders (but not any other Agent or any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (either directly or through one or more acquisition vehicles) for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral to be sold (A) at any public or private sale, (B) at any sale conducted by the Collateral Agent under the provisions of the Uniform Commercial Code (including pursuant to Sections 9-610 or 9-620 of the Uniform Commercial Code), (C) at any sale or foreclosure conducted by the Collateral Agent (whether by judicial action or otherwise) in accordance with applicable law or (D) any sale conducted pursuant to the provisions of any Debtor Relief Law (including Section 363 of the Bankruptcy Code), to use and apply all or any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale.

(e) The Collateral Agent shall have no obligation whatsoever to any Lender to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected or insured or has been encumbered or that the Lien granted to the Collateral Agent pursuant to this Agreement or any other Loan Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 10.08 or in any other Loan Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to any other Lender, except as otherwise provided herein.

Section 10.09 Agency for Perfection. Each Agent and each Lender hereby appoints each other Agent and each other Lender as agent and bailee for the purpose of perfecting the security interests in and liens upon the Collateral in assets which, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession or control (or where the security interest of a secured party with possession or control has priority over the security interest of another secured party) and each Agent and each Lender hereby acknowledges that it holds possession of or otherwise controls any such Collateral for the benefit of the Agents and the Lenders as secured party. Should the Administrative Agent or any Lender obtain possession or control of any such Collateral, the Administrative Agent or such Lender shall notify the Collateral Agent thereof, and, promptly upon the Collateral Agent's request therefor shall deliver such Collateral to the Collateral Agent or in accordance with the Collateral Agent's instructions. In addition, the Collateral Agent shall also have the power and authority hereunder to appoint such other sub-agents as may be necessary or required under applicable state law or otherwise to perform its duties and enforce its rights with respect to the Collateral and under the Loan Documents. Each Loan Party by its execution and delivery of this Agreement hereby consents to the foregoing.

Section 10.10 No Reliance on any Agent's Customer Identification Program. Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on any Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("CIP Regulations"), or any other Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Loan Parties, their Affiliates or their agents, the Loan Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Lender, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

Section 10.11 No Third Party Beneficiaries. The provisions of this Article are solely for the benefit of the Secured Parties, and no Loan Party shall have rights as a third-party beneficiary of any of such provisions.

Section 10.12 No Fiduciary Relationship. It is understood and agreed that the use of the term "agent" herein or in any other Loan Document (or any other similar term) with reference to any Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

Section 10.13 Reports; Confidentiality; Disclaimers. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that each Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report with respect to the Parent or any of its Subsidiaries (each, a "Report") prepared by or at the request of such Agent, and each Agent shall so furnish each Lender with each such Report,

(b) expressly agrees and acknowledges that the Agents (i) do not make any representation or warranty as to the accuracy of any Reports, and (ii) shall not be liable for any information contained in any Reports,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any Agent or other party performing any audit or examination will inspect only specific information regarding the Parent and its Subsidiaries and will rely significantly upon the Parent's and its Subsidiaries' books and records, as well as on representations of their personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 12.19, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold any Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrower, and (ii) to pay and protect, and indemnify, defend and hold any Agent and any other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by any such Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 10.14 Collateral Custodian. Upon the occurrence and during the continuance of any Default or Event of Default, the Collateral Agent or its designee may at any time and from time to time employ and maintain on the premises of any Loan Party a custodian selected by the Collateral Agent or its designee who shall have full authority to do all acts necessary to protect the Agents' and the Lenders' interests. Each Loan Party hereby agrees to, and to cause its Subsidiaries to, cooperate with any such custodian and to do whatever the Collateral Agent or its designee may reasonably request to preserve the Collateral. All costs and expenses incurred by the Collateral Agent or its designee by reason of the employment of the custodian shall be the responsibility of the Borrowers and charged to the Loan Account.

Section 10.15 [Reserved].

Section 10.16 [Reserved].

Section 10.17 Collateral Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Collateral Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether any Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Secured Parties (including any claim for the compensation, expenses, disbursements and advances of the Secured Parties and their respective agents and counsel and all other amounts due the Secured Parties hereunder and under the other Loan Documents) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to the Collateral Agent and, in the event that the Collateral Agent shall consent to the making of such payments directly to the Secured Parties, to pay to the Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Collateral Agent and its agents and counsel, and any other amounts due the Collateral Agent hereunder and under the other Loan Documents.

Section 10.18 Erroneous Distribution. If all or any part of any payment or other distribution by or on behalf of the Administrative Agent to any Borrower, Lender, or other Person is determined by the Administrative Agent in its sole discretion to have been made in error as determined by the Administrative Agent (any such distribution, an "Erroneous Distribution"), then the relevant Borrower, Lender, or other Person shall forthwith on written demand (accompanied by a reasonably detailed calculation of such Erroneous Distribution) repay to the Administrative Agent the amount of such Erroneous Distribution received by such Person. Any determination by the Administrative Agent, in its sole discretion, that all or a portion of any distribution to a Borrower, Lender, or other Person was an Erroneous Distribution shall be conclusive absent manifest error. Each Borrower, Lender, and other potential recipient of an Erroneous Distribution hereunder waives any claim of discharge for value and any other claim of entitlement to, or in respect of, any Erroneous Distribution.

ARTICLE XI

GUARANTY

Section 11.01 Guaranty. Each Guarantor hereby jointly and severally and unconditionally and irrevocably guarantees the punctual payment when due, whether at stated maturity, by acceleration or otherwise, of all Obligations of the Borrowers now or hereafter existing under any Loan Document, whether for principal, interest (including, without limitation, all interest that accrues after the commencement of any Insolvency Proceeding of any Borrower, whether or not a claim for post-filing interest is allowed in such Insolvency Proceeding) fees, commissions, expense reimbursements, indemnifications or otherwise (such obligations, to the extent not paid by the Borrower, being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including reasonable counsel fees and expenses) incurred by the Secured Parties in enforcing any rights under the guaranty set forth in this Article XI. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by the Borrowers to the Secured Parties under any Loan Document but for the fact that they are unenforceable or not allowable due to the existence of an Insolvency Proceeding involving any Borrower. Notwithstanding any of the foregoing, Guaranteed Obligations shall not include any Excluded Swap Obligations.

Section 11.02 Guaranty Absolute. Each Guarantor jointly and severally guarantees that the Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Secured Parties with respect thereto. Each Guarantor agrees that this Article XI constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be made by any Agent or any Lender to any Collateral. The obligations of each Guarantor under this Article XI are independent of the Guaranteed Obligations, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce such obligations, irrespective of whether any action is brought against any Loan Party or whether any Loan Party is joined in any such action or actions. The liability of each Guarantor under this Article XI shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now or hereafter have in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

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

(c) any taking, exchange, release or non-perfection of any Collateral, or any taking, release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(d) the existence of any claim, set-off, defense or other right that any Guarantor may have at any time against any Person, including, without limitation, any Secured Party;

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

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

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

Section 11.03 Waiver. Each Guarantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and any other notice with respect to any of the Guaranteed Obligations and this Article XI and any requirement that the Secured Parties exhaust any right or take any action against any Loan Party or any other Person or any Collateral, (iii) any right to compel or direct any Secured Party to seek payment or recovery of any amounts owed under this Article XI from any one particular fund or source or to exhaust any right or take any action against any other Loan Party, any other Person or any Collateral, (iv) any requirement that any Secured Party protect, secure, perfect or insure any security interest or Lien on any property subject thereto or exhaust any right to take any action against any Loan Party, any other Person or any Collateral, and (v) any other defense available to any Guarantor. Each Guarantor agrees that the Secured Parties shall have no obligation to marshal any assets in favor of any Guarantor or against, or in payment of, any or all of the Obligations. Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated herein and that the waiver set forth in this Section 11.03 is knowingly made in contemplation of such benefits. Each Guarantor hereby waives any right to revoke this Article XI, and acknowledges that this Article XI is continuing in nature and applies to all Guaranteed Obligations, whether existing now or in the future.

Section 11.04 Continuing Guaranty; Assignments. This Article XI is a continuing guaranty and shall (a) remain in full force and effect until the later of the cash payment in full of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Parties and their successors, pledgees, transferees and assigns. Without limiting the generality of the foregoing clause (c), any Lender may pledge, assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, its Loans owing to it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted such Lender herein or otherwise, in each case as provided in Section 12.07.

Section 11.05 Subrogation. No Guarantor will exercise any rights that it may now or hereafter acquire against any Loan Party or any other guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under this Article XI, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Secured Parties against any Loan Party or any other guarantor or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from any Loan Party or any other guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security solely on account of such claim, remedy or right, unless and until all of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI shall have been paid in full in cash and the Final Maturity Date shall have occurred. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the later of the payment in full in cash of the Guaranteed Obligations (other than Contingent Indemnity Obligations) and all other amounts payable under this Article XI and the Final Maturity Date, such amount shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to be credited and applied to the Guaranteed Obligations and all other amounts payable under this Article XI, whether matured or unmatured, in accordance with the terms of this Agreement, or to be held as Collateral for any Guaranteed Obligations or other amounts payable under this Article XI thereafter arising. If (i) any Guarantor shall make payment to the Secured Parties of all or any part of the Guaranteed Obligations, (ii) all of the Guaranteed Obligations and all other amounts payable under this Article XI shall be paid in full in cash and (iii) the Final Maturity Date shall have occurred, the Secured Parties will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Guaranteed Obligations resulting from such payment by such Guarantor.

Section 11.06 Contribution. All Guarantors desire to allocate among themselves, in a fair and equitable manner, their obligations arising under this Guaranty. Accordingly, in the event any payment or distribution is made on any date by a Guarantor under this Guaranty such that its Aggregate Payments exceeds its Fair Share as of such date, such Guarantor shall be entitled to a contribution from each of the other Guarantors in an amount sufficient to cause each Guarantor's Aggregate Payments to equal its Fair Share as of such date. "Fair Share" means, with respect to any Guarantor as of any date of determination, an amount equal to (a) the ratio of (i) the Fair Share Contribution Amount with respect to such Guarantor, to (ii) the aggregate of the Fair Share Contribution Amounts with respect to all Guarantors multiplied by, (b) the aggregate amount paid or distributed on or before such date by all Guarantors under this Guaranty in respect of the obligations Guaranteed. "Fair Share Contribution Amount" means, with respect to any Guarantor as of any date of determination, the maximum aggregate amount of the obligations of such Guarantor under this Guaranty that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of Title 11 of the United States Code or any comparable applicable provisions of state law; provided, solely for purposes of calculating the "Fair Share Contribution Amount" with respect to any Guarantor for purposes of this Section 11.06, any assets or liabilities of such Guarantor arising by virtue of any rights to subrogation, reimbursement or indemnification or any rights to or obligations of contribution hereunder shall not be considered as assets or liabilities of such Guarantor. "Aggregate Payments" means, with respect to any Guarantor as of any date of determination, an amount equal to (A) the aggregate amount of all payments and distributions made on or before such date by such Guarantor in respect of this Guaranty (including, without limitation, in respect of this Section 11.06), minus (B) the aggregate amount of all payments received on or before such date by such Guarantor from the other Guarantors as contributions under this Section 11.06. The amounts payable as contributions hereunder shall be determined as of the date on which the related payment or distribution is made by the applicable Guarantor. The allocation among Guarantors of their obligations as set forth in this Section 11.06 shall not be construed in any way to limit the liability of any Guarantor hereunder. Each Guarantor is a third party beneficiary to the contribution agreement set forth in this Section 11.06.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Notices, Etc.

(a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be delivered by hand, overnight courier, or electronic mail. In the case of notices or other communications to any Loan Party, Administrative Agent or the Collateral Agent, as the case may be, they shall be sent to the respective address set forth below (or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section 12.01):

OptimizeRx Corporation
260 Charles Street, Suite 302
Waltham, Massachusetts 02453
Attention: Chief Financial Officer
Telephone: (248) 651-6568
Email: finance@optimizerx.com

with a copy to:

OptimizeRx Corporation
260 Charles Street, Suite 302
Waltham, Massachusetts 02453
Attention: General Counsel
Telephone: (248) 651-6568
Email: legalteam@optimizerx.con

and

Blank Rome LLP
One Logan Square
Philadelphia, Pennsylvania 19103
Attention: Gary R. Goldenberg
Telephone: 215-569-5733
Email: gary.goldenberg@blankrome.com

if to the Administrative Agent or the Collateral Agent, to it at the following address:

Blue Torch Finance, LLC
c/o Blue Torch Capital LP
150 East 58th Street, 39th Floor
New York, New York 10155
Email: BlueTorchAgency@alterdomus.com

with a copy to:

SEI – Blue Torch Capital Loan Ops
1 Freedom Valley Drive
Oaks, Pennsylvania 19456
Telecopier: (469) 709-1839
Email: bluetorch.loanops@seic.com

in each case, with a mandatory copy that shall not constitute notice to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, New York 10036
Attention: Leonard Klingbaum and Max Silverstein
Email: leonard.klingbaum@ropesgray.com; maxwell.silverstein@ropesgray.com

All notices or other communications sent in accordance with this Section 12.01, shall be deemed received on the earlier of the date of actual receipt; provided, that (i) notices sent by overnight courier service shall be deemed to have been given when received and (ii) notices by electronic mail shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), provided, further that notices to any Agent pursuant to Article II shall not be effective until received by such Agent.

(b) Electronic Communications.

(i) Each Agent and the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agents, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Agents that it is incapable of receiving notices under such Article by electronic communication.

(ii) Unless the Administrative Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

Section 12.02 Amendments, Etc. iii) No amendment or waiver of any provision of this Agreement or any other Loan Document (excluding the Fee Letter), and no consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect or inconsistency or granting a new Lien for the benefit of the Agents and the Lenders or extending an existing Lien over additional property, by the Agents and the Borrower, (y) in the case of any other waiver or consent, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by the Collateral Agent with the consent of the Required Lenders) and the Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall:

(i) increase the Commitment of any Lender, reduce the principal of, or interest on, the Loans payable to any Lender, reduce the amount of any fee payable for the account of any Lender, or postpone or extend any scheduled date fixed for any payment of principal of, or interest or fees on, the Loans payable to any Lender, in each case, without the written consent of such Lender;

(ii) [reserved];

(iii) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans that is required for the Lenders or any of them to take any action hereunder without the written consent of each Lender;

(iv) amend the definition of "Required Lenders" or "Pro Rata Share" without the written consent of each Lender;

(v) release all or a substantial portion of the Collateral (except as otherwise provided in this Agreement and the other Loan Documents), subordinate any Lien granted in favor of the Collateral Agent for the benefit of the Agents and the Lenders, or release any Borrower or any Guarantor (except in connection with a Disposition of the Equity Interests thereof permitted by Section 7.02(c)(ii)), in each case, without the written consent of each Lender; provided, that the Required Lenders may elect to release all or a substantial portion of the Collateral without the requirement to obtain the written consent of each Lender if such release is in connection with (x) an exercise of remedies by the Collateral Agent at the direction of the Required Lenders pursuant to Section 9.01 or (y) any Disposition of all or a substantial portion of the Collateral by one or more of the Loan Parties with the consent of the Required Lenders after the occurrence and during the continuance of an Event of Default so long as such Disposition is conducted in a commercially reasonable manner as if such Disposition were a disposition of collateral by a secured creditor in accordance with Article 9 of the UCC; or

(vi) amend, modify or waive Section 4.02, Section 4.03 or this Section 12.02 of this Agreement without the written consent of each Lender.

(b) Notwithstanding anything to the contrary in this Section 12.02:

(i) no amendment, waiver or consent shall, unless in writing and signed by an Agent, affect the rights or duties of such Agent (but not in its capacity as a Lender) under this Agreement or the other Loan Documents;

(ii) any amendment, waiver or consent to any provision of this Agreement (including Sections 4.01 and 4.02) that permits any Loan Party, or any of their respective Affiliates to purchase Loans on a non-pro rata basis, become an eligible assignee pursuant to Section 12.07 and/or make offers to make optional prepayments on a non-pro rata basis shall require the prior written consent of the Required Lenders rather than the prior written consent of each Lender directly affected thereby;

(iii) any Control Agreement, Guaranty, Mortgage, Security Agreement, collateral access agreement, landlord waiver or other agreement or document purporting to create or perfect a security interest in any of the Collateral (a "Collateral Document") may be amended, waived or otherwise modified with the consent of the applicable Agent and the applicable Loan Party without the need to obtain the consent of any Lender or any other Person if such amendment, modification, supplement or waiver is delivered in order (A) to comply with local Requirements of Law (including foreign law or regulatory requirements) or advice of local counsel, (B) to cure any ambiguity, inconsistency, omission, mistake or defect or (C) to cause such Collateral Document to be consistent with this Agreement and the other Loan Documents, and if the Administrative Agent and the Lead Borrower shall have jointly identified an ambiguity, inconsistency, omission, mistake or defect, in each case, in any provision of any Loan Document (other than a Collateral Document), then the Administrative Agent and the Lead Borrower shall be permitted to amend such provision; any amendment, waiver or modification pursuant to this paragraph shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof;

(iv) no consent of any Loan Party shall be required to change any order of priority set forth in Section 2.05(d) and Section 4.03;

(v) the Administrative Agent and the Lead Borrower may enter into an amendment to this Agreement pursuant to Section 2.07(g) to reflect an alternate service or index rate and such other related changes to this Agreement as may be applicable, and

(vi) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent under the Loan Documents and any Loans held by such Person for purposes hereof shall be automatically deemed to be voted pro rata according to the Loans of all other Lenders in the aggregate (other than such Defaulting Lender).

(c) If any action to be taken by the Lenders hereunder requires the consent, authorization, or agreement of all of the Lenders or any Lender affected thereby, and a Lender other than the Collateral Agent and the Administrative Agent and their respective Affiliates and Related Funds (the "Holdout Lender") fails to give its consent, authorization, or agreement, then the Collateral Agent, upon at least 5 Business Days prior irrevocable notice to the Holdout Lender, may permanently replace the Holdout Lender with one or more substitute lenders (each, a "Replacement Lender"), and the Holdout Lender shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given. Prior to the effective date of such replacement, the Holdout Lender and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender being repaid its share of the outstanding Obligations without any premium or penalty of any kind whatsoever. If the Holdout Lender shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, the Holdout Lender shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender shall be made in accordance with the terms of Section 12.07. Until such time as the Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender hereunder and under the other Loan Documents, the Holdout Lender shall remain obligated to make its Pro Rata Share of Loans.

(d) [Reserved].

(e) The relative rights of the Lenders in or to any distributions from or in respect of any Collateral or proceeds of Collateral shall continue after the institution of any Insolvency Proceeding involving the Borrowers or any other Loan Party, including without limitation, the filing of any petition by or against the Borrowers or any other Loan Party under the Bankruptcy Code, or any other Debtor Relief Law, and all converted or succeeding cases in respect thereof, on the same basis as prior to the date of such institution, subject to any court order approving the financing of, or use of cash collateral by, the Borrowers or any Loan Party as debtor-in-possession.

(f) The parties hereto agree that, in any case under which a Loan Party has filed a petition for relief under the Bankruptcy Code or the filing of any petition for relief against a Loan Party under the Bankruptcy Code, the Required Lenders may direct the Collateral Agent to consent or object to any sale or other disposition (and shall be deemed to be sub-agent for such purpose to the extent necessary to confirm standing under this Agreement or the other Loan Documents) under Section 363 of the Bankruptcy Code, or any similar provision of any other Debtor Relief Law.

Section 12.03 No Waiver; Remedies, Etc. No failure on the part of any Agent or any Lender to exercise, and no delay in exercising, any right hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of the Agents and the Lenders provided herein and in the other Loan Documents are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law. The rights of the Agents and the Lenders under any Loan Document against any party thereto are not conditional or contingent on any attempt by the Agents and the Lenders to exercise any of their rights under any other Loan Document against such party or against any other Person.

Section 12.04 Expenses; Attorneys' Fees. The Borrowers will pay on demand, all reasonable and documented out-of-pocket costs and expenses incurred by or on behalf of each Agent (and, in the case of clauses (c) through (m) below, each Lender), regardless of whether the transactions contemplated hereby are consummated, including, without limitation, reasonable fees, costs, client charges and expenses of counsel for each Agent (and, in the case of clauses (b) through (m) below, each Lender), accounting, due diligence, periodic field audits, physical counts, valuations, investigations, searches and filings, monitoring of assets, appraisals of Collateral, the rating of the Loans, title searches and reviewing environmental assessments, miscellaneous disbursements, examination, travel, lodging and meals, arising from or relating to: (a) the negotiation, preparation, execution, delivery, performance and administration of this Agreement and the other Loan Documents (including, without limitation, the preparation of any additional Loan Documents pursuant to Section 7.01(b) or the review of any of the agreements, instruments and documents referred to in Section 7.01(f)), (b) any requested amendments, waivers or consents to this Agreement or the other Loan Documents whether or not such documents become effective or are given, (c) the preservation and protection of the Agents' or any of the Lenders' rights under this Agreement or the other Loan Documents, (d) the defense of any claim or action asserted or brought against any Agent or any Lender by any Person that arises from or relates to this Agreement, any other Loan Document, the Agents' or the Lenders' claims against any Loan Party, or any and all matters in connection therewith, (e) the commencement or defense of, or intervention in, any court proceeding arising from or related to this Agreement or any other Loan Document, (f) the filing of any petition, complaint, answer, motion or other pleading by any Agent or any Lender, or the taking of any action in respect of the Collateral or other security, in connection with this Agreement or any other Loan Document, (g) the protection, collection, lease, sale, taking possession of or liquidation of, any Collateral or other security in connection with this Agreement or any other Loan Document, (h) any attempt to enforce any Lien or security interest in any Collateral or other security in connection with this Agreement or any other Loan Document, (i) any attempt to collect from any Loan Party, (j) any Environmental Claim, Environmental Liability or Remedial Action arising from or in connection with the past, present or future operations of, or any property currently, formerly or in the future owned, leased or operated by, any Loan Party, any of its Subsidiaries or any predecessor in interest, (k) any Environmental Lien, (l) the rating of the Loans by one or more rating agencies in connection with any Lender's Securitization, or (m) the receipt by any Agent or any Lender of any advice from professionals with respect to any of the foregoing. Without limitation of the foregoing or any other provision of any Loan Document: (x) the Borrowers agree to pay all broker fees that may become due in connection with the transactions contemplated by this Agreement and the other Loan Documents and (y) if the Borrowers fail to perform any covenant or agreement contained herein or in any other Loan Document, any Agent may itself perform or cause performance of such covenant or agreement, and the expenses of such Agent incurred in connection therewith shall be reimbursed on demand by the Borrower. The obligations of the Borrowers under this Section 12.04 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents. This Section 12.04 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 12.05 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, any Agent or any Lender may, and is hereby authorized to, at any time and from time to time, without notice to any Loan Party (any such notice being expressly waived by the Loan Parties) and to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by such Agent or such Lender or any of their respective Affiliates to or for the credit or the account of any Loan Party against any and all obligations of the Loan Parties either now or hereafter existing under any Loan Document, irrespective of whether or not such Agent or such Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured; provided that in the event that any Defaulting Lender shall exercise any such right of set-off, (a) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.04 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agents and the Lenders, and (b) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of set-off. Each Agent and each Lender agrees to notify such Loan Party promptly after any such set-off and application made by such Agent or such Lender or any of their respective Affiliates provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Agents and the Lenders under this Section 12.05 are in addition to the other rights and remedies (including other rights of set-off) which the Agents and the Lenders may have under this Agreement or any other Loan Documents of law or otherwise.

Section 12.06 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.07 Assignments and Participations.

(a) This Agreement and the other Loan Documents shall be binding upon and inure to the benefit of each Loan Party and each Agent and each Lender and their respective successors and assigns; provided, however, that none of the Loan Parties may assign or transfer any of its rights hereunder or under the other Loan Documents without the prior written consent of each Lender and any such assignment without the Lenders' prior written consent shall be null and void.

(b) Subject to the conditions set forth in clause (c) below, each Lender may assign to one or more other lenders or other entities all or a portion of its rights and obligations under this Agreement with respect to all or a portion of its Term Loan Commitment and any Term Loan made by it with the written consent of the Collateral Agent and, so long as no Event of Default has occurred and is continuing, Borrowers (which consent shall not be unreasonably withheld, conditioned or delayed), which assignment shall be effected upon recordation in the Register;

provided, however, that no written consent of the Collateral Agent, the Administrative Agent or Borrowers shall be required (A) in connection with any assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) if such assignment is in connection with any merger, consolidation, sale, transfer, or other disposition of all or any substantial portion of the business or loan portfolio of such Lender.

(c) Assignments shall be subject to the following additional conditions:

(i) Each such assignment shall be in an amount which is at least $5,000,000 or a multiple of $1,000,000 in excess thereof (or the remainder of such Lender's Commitment) (except such minimum amount shall not apply to an assignment by a Lender to (A) a Lender, an Affiliate of such Lender or a Related Fund of such Lender or (B) a group of new Lenders, each of whom is an Affiliate or Related Fund of each other to the extent the aggregate amount to be assigned to all such new Lenders is at least $5,000,000 or a multiple of $1,000,000 in excess thereof);

(ii) The parties to each such assignment shall execute and deliver to the Collateral Agent (and the Administrative Agent, if applicable), for its acceptance, an Assignment and Acceptance, together with any promissory note subject to such assignment and such Lender parties shall deliver to the Collateral Agent, for the benefit of the Collateral Agent, a processing and recordation fee of $5,000 (except the payment of such fee shall not be required in connection with an assignment by a Lender to a Lender, an Affiliate of such Lender or a Related Fund of such Lender) and all documentation and other information that such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering or terrorist financing rules and regulations, including the USA PATRIOT Act; and

(iii) No such assignment shall be made to (A) any Loan Party, any Permitted Holder (or other equity holder of the Lead Borrower) or any of their respective Affiliates or (B) any Defaulting Lender or any of its Affiliates, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(d) Upon such execution, delivery and acceptance, from and after the effective date specified in each Assignment and Acceptance and recordation on the Register, which effective date shall be at least 3 Business Days after the delivery thereof to the Collateral Agent (or such shorter period as shall be agreed to by the Collateral Agent and the parties to such assignment), (A) the assignee thereunder shall become a "Lender" hereunder and, in addition to the rights and obligations hereunder held by it immediately prior to such effective date, have the rights and obligations hereunder that have been assigned to it pursuant to such Assignment and Acceptance and (B) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto).

(e) By executing and delivering an Assignment and Acceptance, the assigning Lender and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or any other Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto; (ii) the assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or any of its Subsidiaries or the performance or observance by any Loan Party of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement and the other Loan Documents, together with such other documents and information it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, any Agent or any Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents; (v) such assignee appoints and authorizes the Agents to take such action as agents on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agents by the terms hereof and thereof, together with such powers as are reasonably incidental hereto and thereto; and (vi) such assignee agrees that it will perform in accordance with their terms all of the obligations which by the terms of this Agreement and the other Loan Documents are required to be performed by it as a Lender.

(f) The Administrative Agent shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain, or cause to be maintained at the Payment Office, a copy of each Assignment and Acceptance delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Commitments of, and the principal amount of the Loans (and stated interest thereon) owing to each Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior written notice. The parties intend that any interest in or with respect to the Loans under this Agreement be treated as being issued and maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the Code and any regulations thereunder (and any successor provisions), including without limitation under United States Treasury Regulations Section 5f.103-1(c) and Proposed Regulations Section 1.163-5 (and any successor provisions), and the provisions of this Agreement shall be construed in a manner that gives effect to such intent.

(g) Upon receipt by the Administrative Agent of a completed Assignment and Acceptance, and subject to any consent required from the Administrative Agent or the Collateral Agent pursuant to Section 12.07(b) (which consent of the applicable Agent must be evidenced by such Agent's execution of an acceptance to such Assignment and Acceptance), the Administrative Agent shall accept such assignment, record the information contained therein in the Register (as adjusted to reflect any principal payments on or amounts capitalized and added to the principal balance of the Loans and/or Commitment reductions made subsequent to the effective date of the applicable assignment, as confirmed in writing by the corresponding assignor and assignee in conjunction with delivery of the assignment to the Administrative Agent) and provide to the Collateral Agent a copy of the fully executed Assignment and Acceptance.

(h) A Loan (and the note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each note shall expressly so provide). Any assignment or sale of all or part of such Loan (and the note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s).

(i) If any Lender sells participations in a Loan, such Lender shall, acting for this purpose as a non-fiduciary agent on behalf of the Borrower, maintain, or cause to be maintained, a register, on which it enters the name of all participants in the Loans held by it and the principal amount (and stated interest thereon) of the portion of the Loan that is the subject of the participation (the "Participant Register"). A Loan (and the note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each note shall expressly so provide). Any participation of such Loan (and the note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Lead Borrower and any Lender at any reasonable time and from time to time upon reasonable prior notice, *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under the Code or Treasury Regulations, including without limitation Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(j) Any Lender who purchases or is assigned or participates in any portion of such Loan shall comply with Section 2.09(d), provided that any documents provided by a participant shall be provided only to the participating Lender.

(k) Each Lender may sell participations to one or more banks or other entities in or to all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including, without limitation, all or a portion of its Commitments and the Loans made by it); provided, that (i) such Lender's obligations under this Agreement (including without limitation, its Commitments hereunder) and the other Loan Documents shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents; and (iii) a participant shall not be entitled to require such Lender to take or omit to take any action hereunder except (A) action directly effecting an extension of the maturity dates or decrease in the principal amount of the Loans, (B) action directly effecting an extension of the due dates or a decrease in the rate of interest payable on the Loans or the fees payable under this Agreement, or (C) actions directly effecting a release of all or a substantial portion of the Collateral or any Loan Party (except as set forth in Section 10.08 of this Agreement or any other Loan Document). The Loan Parties agree that each participant shall be entitled to the benefits of Section 2.09 and Section 2.10 of this Agreement (subject to the requirements and limitations therein, including the requirements under Section 2.09(d) (it being understood that the documentation required under Section 2.09(d) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such participant shall not be entitled to receive any greater payment under Section 2.09, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the participant acquired the applicable participation.

(l) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or loans made to, or other indebtedness issued by, such Lender pursuant to a securitization transaction (including any structured warehouse credit facility, collateralized loan obligation transaction or similar facility or transaction, and including any further securitization of the indebtedness or equity issued under such a transaction) (a "Securitization"); provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. The Loan Parties shall cooperate with such Lender and its Affiliates to effect a Securitization, including, without limitation, by providing such information as may be reasonably requested by such Lender in connection with the rating of its Loans or any Securitization.

Section 12.08 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telecopier or electronic mail shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telecopier or electronic mail also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

Section 12.09 GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK.

Section 12.10 CONSENT TO JURISDICTION; SERVICE OF PROCESS AND VENUE.

(a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK IN THE COUNTY OF NEW YORK OR OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS AND IN ANY SUCH ACTION OR PROCEEDING BY ANY MEANS PERMITTED BY APPLICABLE LAW, INCLUDING, WITHOUT LIMITATION, BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE LEAD BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 12.01, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENTS AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH LOAN PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

(b) Each Loan Party irrevocably and unconditionally agrees that it will not commence any action or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any Agent, any Lender or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof.

Section 12.11 WAIVER OF JURY TRIAL, ETC. EACH LOAN PARTY, EACH AGENT AND EACH LENDER HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH LOAN PARTY CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENTS AND THE LENDERS ENTERING INTO THIS AGREEMENT.

Section 12.12 Consent by the Agents and Lenders. Except as otherwise expressly set forth herein to the contrary or in any other Loan Document, if the consent, approval, satisfaction, determination, judgment, acceptance or similar action (an "Action") of any Agent or any Lender shall be permitted or required pursuant to any provision hereof or any provision of any other agreement to which any Loan Party is a party and to which any Agent or any Lender has succeeded thereto, such Action shall be required to be in writing and may be withheld or denied by such Agent or such Lender, in its sole discretion, with or without any reason, and without being subject to question or challenge on the grounds that such Action was not taken in good faith.

Section 12.13 No Party Deemed Drafter. Each of the parties hereto agrees that no party hereto shall be deemed to be the drafter of this Agreement.

Section 12.14 Reinstatement; Certain Payments. If any claim is ever made upon any Secured Party for repayment or recovery of any amount or amounts received by such Secured Party in payment or on account of any of the Obligations, such Secured Party shall give prompt notice of such claim to each other Agent and Lender and the Borrower, and if such Secured Party repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such Secured Party or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by such Secured Party with any such claimant, then and in such event each Loan Party agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to such Secured Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Secured Party.

Section 12.15 Indemnification; Limitation of Liability for Certain Damages.

(a) In addition to each Loan Party's other Obligations under this Agreement, each Loan Party agrees to, jointly and severally, defend, protect, indemnify and hold harmless each Secured Party and all of their respective Related Parties (collectively called the "Indemnitees") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, whether prior to or from and after the Effective Date, whether direct, indirect or consequential, as a result of or arising from or relating to or in connection with any of the following: (i) the negotiation, preparation, execution or performance or enforcement of this Agreement, any other Loan Document, of any Environmental Claim or any other document executed in connection with the transactions contemplated by this Agreement, (ii) any Agent's or any Lender's furnishing of funds to the Borrowers under this Agreement or the other Loan Documents, including, without limitation, the management of any such Loans or the Borrower's use of the proceeds thereof, (iii) the Agents and the Lenders relying on any instructions of the Borrowers or the handling of the Loan Account and Collateral of the Borrowers as herein provided, (iv) any matter relating to the financing transactions contemplated by this Agreement or the other Loan Documents or by any document executed in connection with the transactions contemplated by this Agreement or the other Loan Documents, or (v) any claim, including any Environmental litigation, investigation or proceeding relating to or arising out of any of the foregoing, whether or not any Indemnitee is a party thereto (collectively, the "Indemnified Matters"); provided, however, that the Loan Parties shall not have any obligation to any Indemnitee under this subsection (a) for any Indemnified Matter caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) The indemnification for all of the foregoing losses, damages, fees, costs and expenses of the Indemnitees set forth in this Section 12.15 are chargeable against the Loan Account. To the extent that the undertaking to indemnify, pay and hold harmless set forth in this Section 12.15 may be unenforceable because it is violative of any law or public policy, each Loan Party shall, jointly and severally, contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees.

(c) No Loan Party shall assert, and each Loan Party hereby waives, any claim against the Indemnitees, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any other Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Loan Party hereby waives, releases and agrees not to sue upon any such claim or seek any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(d) The indemnities and waivers set forth in this Section 12.15 shall survive the repayment of the Obligations and discharge of any Liens granted under the Loan Documents.

(e) This Section 12.15 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

Section 12.16 Records. The unpaid principal of and interest on the Loans, the interest rate or rates applicable to such unpaid principal and interest, the duration of such applicability, the Commitments, and the accrued and unpaid fees payable pursuant to Section 2.06 hereof, shall at all times be ascertained from the records of the Agents, which shall be conclusive and binding absent manifest error.

Section 12.17 Binding Effect. This Agreement shall become effective when it shall have been executed by each Loan Party, each Agent and each Lender and when the conditions precedent set forth in Section 5.01 hereof have been satisfied or waived in writing by the Agents, and thereafter shall be binding upon and inure to the benefit of each Loan Party, each Agent and each Lender, and their respective successors and assigns, except that the Loan Parties shall not have the right to assign their rights hereunder or any interest herein without the prior written consent of each Agent and each Lender, and any assignment by any Lender shall be governed by Section 12.07 hereof.

Section 12.18 Highest Lawful Rate. It is the intention of the parties hereto that each Agent and each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Loan Document would be usurious as to any Agent or any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Agent or such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Loan Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to any Agent or any Lender that is contracted for, taken, reserved, charged or received by such Agent or such Lender under this Agreement or any other Loan Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by such Agent or such Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender, as applicable, to the Borrower); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Agent or any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section 12.18, be canceled automatically by such Agent or such Lender, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Agent or such Lender, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by such Agent or such Lender to the Borrower). All sums paid or agreed to be paid to any Agent or any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Agent or such Lender, be amortized, prorated, allocated and spread throughout the full term of the Loans until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to any Agent or any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Agent or such Lender pursuant to this Section 12.18 and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Agent or such Lender would be less than the amount of interest payable to such Agent or such Lender computed at the Highest Lawful Rate applicable to such Agent or such Lender, then the amount of interest payable to such Agent or such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Agent or such Lender until the total amount of interest payable to such Agent or such Lender shall equal the total amount of interest which would have been payable to such Agent or such Lender if the total amount of interest had been computed without giving effect to this Section 12.18.

For purposes of this Section 12.18, the term "applicable law" shall mean that law in effect from time to time and applicable to the loan transaction between the Borrower, on the one hand, and the Agents and the Lenders, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such loan transaction and this Agreement, including laws of the State of New York.

The right to accelerate the maturity of the Obligations does not include the right to accelerate any interest that has not accrued as of the date of acceleration.

Section 12.19 Confidentiality. Each Agent and each Lender agrees (on behalf of itself and its Related Parties) to use commercially reasonable precautions to keep confidential, in accordance with its customary procedures for handling confidential information of this nature and in accordance with safe and sound practices of comparable commercial finance companies, any non-public information supplied to it by the Loan Parties pursuant to this Agreement or the other Loan Documents which is identified in writing by the Loan Parties as being confidential at the time the same is delivered to such Person (and which at the time is not, and does not thereafter become, publicly available or available to such Person from another source not known to be subject to a confidentiality obligation to such Person not to disclose such information), provided that nothing herein shall limit the disclosure by any Agent or any Lender of any such information (i) to its Affiliates, its Related Parties or the Related Parties of any Person described in clause (ii) or (iii) below (it being understood that the Persons to whom such disclosure is made either will be informed of the confidential nature of such information and instructed to keep such information confidential in accordance with this Section 12.19 or is subject to other customary confidentiality obligations); (ii) to any other party hereto; (iii) to any assignee or participant (or prospective assignee or participant) or any party to a Securitization, so long as such assignee or participant (or prospective assignee or participant) or party to a Securitization agrees, in writing, to be bound by or is otherwise subject to customary confidentiality obligations (including, without limitation, confidentiality provisions similar in substance to this Section 12.19); (iv) to the extent required by any Requirement of Law or judicial process or as otherwise requested by any Governmental Authority; (v) to the National Association of Insurance Commissioners or any similar organization, any examiner, auditor or accountant or any nationally recognized rating agency; (vi) in connection with any litigation to which any Agent or any Lender is a party; (vii) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (viii) to any other Person if such information is general portfolio information that does not identity the Loan Parties, or (ix) with the consent of the Borrower. In addition, the Agents and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to any Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

Section 12.20 Public Disclosure. Each Loan Party agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure using the name of an Agent, any Lender or any of their respective Affiliates or referring to this Agreement or any other Loan Document without the prior written consent of such Agent or such Lender, except to the extent that such Loan Party or such Affiliate is required to do so under applicable law (in which event, such Loan Party or such Affiliate will consult with such Agent or such Lender before issuing such press release or other public disclosure). Each Loan Party hereby authorizes each Agent and each Lender, after consultation with the Borrower, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as such Agent or such Lender shall deem appropriate, including, without limitation, on a home page or similar place for dissemination of information on the Internet or worldwide web, or in announcements commonly known as tombstones, in such trade publications, business journals, newspapers of general circulation and to such selected parties as such Agent or such Lender shall deem appropriate, provided that any such announcement that includes the name or other identifying mark of the Borrowers shall require the consent of the Lead Borrower.

Section 12.21 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

Section 12.22 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Borrower, which information includes the name and address of each such entity and other information that will allow such Lender to identify the entities composing the Borrowers in accordance with the USA PATRIOT Act. Each Loan Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Lender may reasonably require from time to time in order to enable such Lender to comply with the USA PATRIOT Act.

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

BORROWER:

OPTIMIZERX CORPORATION

By: /s/ Edward Stelmakh
Name: Edward Stelmakh
Title: Chief Financial Officer

COLLATERAL AGENT AND ADMINISTRATIVE AGENT:

BLUE TORCH FINANCE, LLC

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

LENDERS:

BTC HOLDINGS SBAF FUND LLC

By: Blue Torch Credit Opportunities SBAF Fund LP, *its sole member*

By: Blue Torch Credit Opportunities SBAF GP, LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BTC HOLDINGS SBAF-B FUND LLC

By: Blue Torch Credit Opportunities SBAF Fund LP, *its sole member*

By: Blue Torch Credit Opportunities SBAF GP, LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: Blue Torch Credit Opportunities KRS GP LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BTC HOLDINGS KRS FUND LLC

By: Blue Torch Credit Opportunities KRS Fund LP, *its sole member*

By: Blue Torch Credit Opportunities KRS GP LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BLUE TORCH CREDIT OPPORTUNITIES UNLEVERED FUND III LP

By: Blue Torch Credit Opportunities GP III LLC, *its general partner*

By: KPG BTC Management LLC, *its managing member*

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

BTC HOLDINGS FUND III LLC

By: Blue Torch Credit Opportunities Fund III LP, *its sole member*

By: Blue Torch Credit Opportunities GP III LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

[Signature Page to Financing Agreement]

BLUE TORCH CREDIT OPPORTUNITIES FUND III LP

By: Blue Torch Credit Opportunities GP III LLC, *its general partner*

By: KPG BTC Management LLC, *its sole member*

By: /s/ Kevin Genda

Name: Kevin Genda
Title: Managing Member

Exhibit 10.4

Execution Version

Blue Torch Finance, LLC
c/o Blue Torch Capital LP
150 East 58th Street, 39th Floor
New York, NY 10155

CONFIDENTIAL

October 11, 2023

OptimizeRx Corporation
260 Charles Street, Suite 302
Waltham, MA 02453
Attention: Edward Stelmakh, Chief Financial Officer

Fee Letter

Ladies and Gentlemen:

Reference is made to that certain Financing Agreement, dated as of October 11, 2023 (the "**Financing Agreement**"), by and among OptimizeRx Corporation, a Nevada corporation (the "**Lead Borrower**"), Orion Merger Sub Inc., a Nevada corporation (as the "**Initial Co-Borrower**," which on the Closing Date shall be merged with an into Heathy Offers, Inc., a Nevada Corporation (the "**Company**"; such merger, the "**Closing Date Merger**"), with the Company surviving such Closing Date Merger as the "**Co-Borrower**" and, together with the Lead Borrower, the "**Borrowers**" and each a "**Borrower**"), the lenders from time to time party thereto (each a "**Lender**" and collectively, the "**Lenders**"), Blue Torch Finance, LLC, a Delaware limited liability company ("**Blue Torch**"), as collateral agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "**Collateral Agent**"), and Blue Torch, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "**Administrative Agent**" and together with the Collateral Agent, the "**Agent**"). Capitalized terms used but not defined in this letter agreement shall have the meanings assigned thereto in the Financing Agreement. This is the Fee Letter referred to in the Financing Agreement.

The Borrowers agree to pay (or cause to be paid):

(i) to the Administrative Agent, for the account of each Lender based on its Pro Rata Share of the Term Loan Commitment as of the Effective Date, a non-refundable upfront amount equal to 3.5% of the aggregate principal amount of the Term Loan Commitments held by the Term Loan Lenders as of the Effective Date (the "**Upfront Amount**") payable on, and subject to the occurrence of, the Effective Date;

(ii) to the Administrative Agent, a loan servicing fee equal to $250,000 per year (the "**Loan Servicing Fee**"), which fee shall be earned, due and payable in full on the Closing Date, and on each one year anniversary of the Closing Date prior to the payment in full of the Obligations and the termination of the Commitments;

(iii) in the event the Loans are not funded within ten (10) Business Days from the Effective Date, other than as a result of (x) failure by the Lenders to fund despite all conditions to the funding of the Loans on the Closing Date having occurred or (y) an event described in Section 5.02(k) of the Credit Agreement, a non-refundable breakup fee in the amount of $3,000,000 (the "**Breakup Fee**").

The Borrowers agree that, once paid, the fees or any part thereof payable hereunder will not be refundable under any circumstances. All amounts payable under this Fee Letter shall not be subject to counterclaim or set-off for, or otherwise be affected by, any claim or dispute relating to any other matter. In addition, all such payments shall be made without deduction for any taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any national, state or local taxing authority or will be grossed up by the Borrowers for such amounts subject to exceptions consistent with the Financing Agreement mutatis mutandis.

The Borrowers agree, for U.S. federal (and applicable state and local) income tax purposes, to treat the Upfront Amount as premium paid by the Borrowers to the Lenders in exchange for the issuance of a put right to the Borrowers with respect to the Term Loans and not take any tax position inconsistent with the tax treatment described herein.

The Borrowers agree that you will not disclose this Fee Letter or the contents hereof other than as agreed to by the Agent.

This Fee Letter is intended to be solely for the benefit of the Lenders and the parties hereto (and their applicable successors and permitted assigns), and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the Lenders and the parties hereto (and their applicable successors and permitted assigns). This Fee Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by each of the parties hereto. THIS FEE LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. This Fee Letter may be executed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one agreement. Delivery of an executed counterpart of a signature page of this Fee Letter by facsimile transmission or by ".pdf" electronic transmission shall be effective as delivery of a manually executed counterpart of this Fee Letter.

[*Remainder of this page intentionally left blank*]

If the foregoing correctly sets forth our understanding, please indicate your acceptance of the terms hereof by returning to us an executed counterpart hereof, whereupon this Fee Letter shall become a binding agreement between us and you.

[*Signature pages follow*]

Very truly yours,

Blue Torch Finance, LLC

By: /s/ Kevin Genda
Name: Kevin Genda
Title: Managing Member

[Signature Page to Fee Letter]

Accepted and agreed to as of the date first above written:

OptimizeRx Corporation

By /s/ Edward Stelmakh
Name: Edward Stelmakh
Title: Chief Financial Officer

[Signature Page to Fee Letter]

Exhibit 99.1

OptimizeRx Announces Agreement to Acquire Medicx Health for $95 million to Expand its Omnichannel Reach to Consumers

Preannounces Preliminary Third Quarter 2023 Results

OptimizeRx adds new, proven, profitable technologies to become the most comprehensive healthcare marketing platform in the nation.

Consolidated revenue run rate will increase to nearly $100 million and the acquisition is expected to be immediately accretive to earnings.

Third quarter 2023 headline numbers to come in ahead of consensus with revenue for OptimizeRx standalone expected to be between $15.2-$15.5 million and non-GAAP net income expected to be $0.6-$1 million.

Conference call to start at 8:30am EST on Thursday, October 12, 2023.

WALTHAM, MA. – October 12, 2023 – OptimizeRx Corp. (the "Company") (Nasdaq: OPRX), the leading provider of healthcare technology solutions helping life sciences companies reach and engage healthcare professionals (HCPs) and patients, today announced it has signed an agreement to acquire Scottsdale, Arizona-based Healthy Offers, Inc., dba Medicx Health ("Medicx"), a leading healthcare consumer-focused omnichannel marketing and analytics company. The transaction purchase price is $95 million, and certain members of Medicx's management plan to invest approximately $10.5 million of their proceeds into the Company's common stock. Closing is expected during the fourth quarter of 2023.

The acquisition of Medicx further advances OptimizeRx's mission to create a more informed and empowered healthcare community using new technology solutions. The addition of the Medicx patient and HCP-focused Micro-Neighborhood® Targeting Platform, built on its MX# advanced identity resolution technology, to OptimizeRx's HCP-focused Dynamic Audience Activation Platform (DAAP) is expected to provide a single source of innovative technologies that will enhance the reach and efficacy of healthcare marketing for life sciences organizations.

"Our acquisition of Medicx is expected to be a major business accelerator for us as it encompasses all three of our growth drivers: expanding our audience, introducing new solutions, significantly opening client penetration and growth opportunities," said Will Febbo, Chief Executive Officer, OptimizeRx. "Moreover, Medicx has a very healthy financial profile and we believe this acquisition will be transformative to our growth and profitability."

“We’ve led the market in digital point-of-care expansion for pharma marketing and Medicx leads privacy-safe precision patient marketing. Together, we reach over two million HCPs and the majority of the US healthcare consumer population. As we bring our companies together, we see tremendous opportunity to address the unmet needs of our life sciences customers in creating meaningful brand connections with their two most important stakeholders, doctors and patients.”

“Coupling consumer and HCP marketing strategies is a natural next step for many of our customers,” stated Steve Silvestro, Chief Commercial Officer, OptimizeRx. “By being first to build out the connections, OptimizeRx is able to bring our customers two highly complementary solution sets on a single platform. We see an immediate opportunity with embedded customers of both organizations to benefit from the synergies we bring to the market as a combined collective of patient-centric marketing solutions.”

“I’m extremely proud of the leading patient-focused omnichannel platform the Medicx team has built, and believe our robust IP, data, and analytics capabilities will unlock significant customer value when coupled with OptimizeRx’s DAAP technologies and its industry-leading HCP reach,” stated Michael Weintraub, Medicx’s founder and chief executive officer. “Integrating with a leading HCP-focused enterprise provides numerous efficiencies, but more importantly positions the combined companies to fulfill a greater vision of building an end-to-end communication platform that can inform and educate both patients and HCPs through a highly targeted and data rich methodology that has never before been brought together in a cohesive way.”

Strategic and Financial Benefits

- **Positions in Key Growth Area:** As part of OptimizeRx, Medicx technology and analytics solutions is expected to expand OptimizeRx’s addressable footprint in life science commercial digital budgets, a business area that is forecasted to grow 15% to 20% per year, and further enhance the Company’s position as a leading player in the digital pharma marketing landscape.

- **Expands Landing Pads:** The combined companies’ partnerships encompass most major and emerging media outlets leveraged by healthcare marketers, including advanced tv, programmatic digital display and video, social, digital radio, and digital point-of-care such as electronic health record (EHR), e-Prescribing, and telehealth platforms.

- **Unlocks Value for Customers**: In particular, fast-growing specialty brands looking to educate increasingly specific audiences of patients and HCPs will now be able to link the execution of HCP and consumer marketing strategies together into a truly customer-centric marketing ecosystem. We plan to initially focus the operational integration of the combined companies on the top three areas where clients are looking for long-term partners: new product launch support, increased reach to both HCPs and patients, and sustaining adherence.

- **Significant Financial Benefits:** Medicx is a highly profitable company that is expected to contribute meaningfully to revenue, revenue growth, EBITDA and earnings per share. The transaction is expected to be immediately accretive to earnings and on a combined basis will have a revenue run-rate approaching $100 million.

Transaction Details

OptimizeRx will acquire Medicx for $95 million in total consideration, and certain members of Medicx's management plan to invest approximately $10.5 million of their proceeds into the Company's common stock. The cash component of the acquisition is being funded from OptimizeRx's existing cash and short-term investments and from the proceeds of a new $40 million credit facility provided by Blue Torch Capital. Following the transaction, OptimizeRx will have approximately $12.5 million in cash and short-term equivalents available.

RBC Capital Markets, LLC served as exclusive financial advisor to OptimizeRx with respect to the acquisition of Medicx. RBC Capital Markets, LLC served as exclusive placement agent for OptimizeRx with respect to the Blue Torch Capital financing. Blank Rome LLP acted as legal advisor to OptimizeRx for both the acquisition and the financing. Canaccord Genuity served as financial advisor and Weiss Brown provided legal counsel to Medicx.

Preliminary Unaudited Third Quarter Results

For the third quarter, the Company expects revenue between $15.2 million and $15.5 million and non-GAAP net income between $0.6 million and $1.0 million. The sequential revenue growth was primarily driven by strong organic growth in messaging driven by our recent DAAP platform enhancement.

Conference Call

OptimizeRx management will host a conference call, followed by a brief analyst question-and-answer session. Details for the conference call can be found below:

Date: Thursday, October 12, 2023
Time: 8:30 am Eastern Time
Webcast: https://lifescievents.com/event/optimizerx

About OptimizeRx

OptimizeRx provides best-in-class health technology that enables care-focused engagement between life sciences organizations, healthcare providers, and patients at critical junctures throughout the patient care journey. Connecting over 2 million U.S. healthcare providers and millions of their patients through an intelligent technology platform embedded within a proprietary digital point-of-care network, as well as web display and social media, OptimizeRx helps life sciences organizations engage and support their customers.

For more information, follow the Company on Twitter, LinkedIn or visit www.optimizerx.com.

About Medicx Health

Medicx Health leverages real world evidence with innovative SaaS analytics to drive clinical and commercial strategy and execution with measurable ROI for hundreds of life sciences brands. The company's patented Micro-Neighborhood® Targeting technology fuels the industry's highest quality performance for consumer and healthcare provider audiences. Medicx uniquely supports brand and agency clients to plan optimized audience targets, execute efficient omni-channel engagement, as well as measure performance across all channels in a single closed-loop and privacy-compliant environment. Visit medicxhealth.com to learn more.

Definition and Use of Non-GAAP Financial Measures

This earnings release includes a presentation of non-GAAP net loss which is a non-GAAP financial measure.

The Company defines non-GAAP net loss as GAAP net loss with an adjustment to add back depreciation, amortization, stock-based compensation, acquisition expenses, severance expense related to a reduction in force, income or loss related to the fair value of contingent consideration, and deferred income taxes. The Company has provided this non-GAAP financial measure to aid investors in better understanding its performance. Management believes that this non-GAAP financial measure provides additional insight into the operations and cash flow of the Company.

Because of varying available valuation methodologies, subjective assumptions and the variety of equity instruments that can impact a Company's non-cash operating expenses, management believes that providing non-GAAP financial measures that exclude non-cash expenses allows for meaningful comparisons between the Company's core business operating results and those of other companies, as well as provides an important tool for financial and operational decision making and for evaluating the Company's own core business operating results over different periods of time.

The Company's non-GAAP net loss may not provide information that is directly comparable to that provided by other companies in the Company's industry, as other companies in the industry may calculate such non-GAAP financial results differently. The Company's non-GAAP net loss is not a measurement of financial performance under GAAP and should not be considered as an alternative to operating income or as an indication of operating performance or any other measure of performance derived in accordance with GAAP. The Company does not consider this non-GAAP measure to be a substitute for or superior to the information provided by its GAAP financial results.

The table, “Reconciliation of GAAP to NON-GAAP Financial Measures,” included below, provides a reconciliation of non-GAAP net loss for the three months ended September 30, 2023.

Important Cautions Regarding Forward Looking Statements

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (“PSLRA”). Words such as “anticipates”, “believes”, “estimates”, “possible”, “seeking”, “expects”, “forecasts”, “intends”, “plans”, “projects”, “strategy”, “future”, “targets”, “designed”, “likely”, “goal”, “could”, “may”, “should”, “will” or other similar words and expressions are intended to identify these forward-looking statements. All statements other than statements of historical facts regarding our strategies, prospects, financial condition, operations, costs, plans and objectives are forward-looking statements. Examples of forward-looking statements include, among others, statements we make regarding future actions, the proposed acquisition of Medicx, the timing of such acquisition, the anticipated benefits and synergies therefrom, market penetration, revenue growth, operating expenses, profitability, cash flow, growth opportunities and upcoming announcements. OptimizeRx claims the protection afforded by the safe harbor for forward-looking statements provided by the PSLRA.

Forward-looking statements are neither historical facts nor assurances of future performance. Instead, they are based only on our current beliefs, expectations and assumptions regarding the future of our business, future plans and strategies, projections, anticipated events and trends, the economy and other future conditions. Because forward-looking statements relate to the future, they are subject to inherent uncertainties, risks and changes in circumstances that are difficult to predict and many of which are outside of our control. Our actual results and financial condition may differ materially from those indicated in the forward-looking statements. Therefore, you should not rely on any of these forward-looking statements. Important factors that could cause our actual results and financial condition to differ materially from those indicated in the forward-looking statements include, among others, the possibility that the proposed merger will not close when expected or at all; any synergies and other anticipated benefits of the proposed merger may not be realized or may take longer than anticipated to be realized; disruption to the parties’ business activities as a result of the announcement and pendency of the proposed merger and diversion of management’s attention from ongoing business activities and opportunities; the occurrence of any event, change or other circumstances that could give rise to the right of one or both of the parties to terminate the merger agreement; the risk that the integration of OptimizeRx and Medicx will be more costly or difficult than expected; the outcome of any legal proceedings that may be instituted against OptimizeRx and/or Medicx; the failure of any of the closing conditions in the merger agreement to be satisfied on a timely basis or at all; delays in closing the proposed merger; the possibility that the proposed merger may be more expensive to complete than anticipated, including as a result of unexpected factors or events, and the other risks and uncertainties described in our most recently filed Annual Report on Form 10-K and any subsequently filed periodic reports on Forms 10-Q and 8-K. Any forward-looking statement made by us in this press release is based only on information currently available to us and speaks only as of the date on which it is made. We undertake no obligation to publicly update any forward-looking statement, whether written or oral, that may be made from time to time, whether as a result of new information, future events or otherwise.

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OPTIMIZERX CORPORATION

RECONCILIATION of GAAP to NON-GAAP FINANCIAL MEASURES

(UNAUDITED)

$ in millions	**Three Months Ended September 30, 2023**
Net loss	$ (4.1) – (4.0)
Depreciation, amortization, and noncash lease expense	$ 0.5 – 0.5
Stock-based compensation	$ 3.2 – 3.3
Severance expense	$ 0.2 – 0.3
Acquisition expense	$ 0.8 – 0.9
Non-GAAP net income	$ 0.6 – 1.0